128

No. —, Original

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

STATE OF ALASKA,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

ALASKA'S MOTION FOR LEAVE TO FILE A COMPLAINT, COMPLAINT, AND BRIEF IN SUPPORT OF MOTION

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IN THE

Supreme Court of the United States

No. ——, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

MOTION FOR LEAVE TO FILE A COMPLAINT

Pursuant to S. Ct. Rule 17, the State of Alaska, through its Attorney General, asks leave of the Court to file a complaint against the United States to quiet title to the lands underlying marine waters in Southeast Alaska. This motion is accompanied by a complaint and supporting brief.

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STATE OF ALASKA,

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v.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT TO QUIET TITLE

The State of Alaska, plaintiff, alleges as follows:

1. This is an action to quiet title to the tide and submerged lands in Southeast Alaska. These include the submerged lands within the Alexander Archipelago of Southeast Alaska that are enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration, together with the submerged lands extending three miles seaward from that line and from the remainder of Southeast Alaska's coast line. The lands that are the subject of this action are shown on the map at Exhibit ("Ex.") 1.*

2. This Court has jurisdiction under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. § 1251(b)(2).

3. The United States consented to this action in 28 U.S.C. § 2409a(a). Alaska gave the United States written

* Exhibits referenced herein are appended to the accompanying Brief in Support of Motion for Leave to File a Complaint.

notice of its intent to file suit to quiet title to these lands on or about August 21, 1998, and March 22, 1999, as required by 28 U.S.C. § 2409a(m).

Count I: Historic Waters of the Alexander Archipelago

4. Upon admission to the Union on an equal footing with the other States, a new State succeeds to the United States' title to lands underlying navigable inland waters within its boundaries as an incident of its sovereignty.

5. Alaska was admitted to the Union "on an equal footing with the other States in all respects whatever" on January 3, 1959. Alaska Statehood Act § 1, Pub. L. No. 85-508, 48 U.S.C. note prec. § 21.

6. Under the equal footing doctrine, Alaska succeeded to the United States' title to lands underlying navigable inland waters within Alaska's boundaries as an incident of statehood.

7. From at least 1903 until 1971, the United States took the position in its international relations and in litigation with the States in this Court that the waters of the Alexander Archipelago were inland waters, including the pockets and enclaves that are more than three miles from the coast line of the mainland and any of the islands enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration (hereinafter "pockets and enclaves"). These pockets and enclaves are depicted in red on the map at Ex. 1.

8. Foreign nations acquiesced in the United States' claim that the waters of the Alexander Archipelago were inland waters, including the pockets and enclaves.

9. All of the submerged lands within these pockets and enclaves underlie navigable historic inland waters.

10. Because all of the submerged lands within the pockets and enclaves underlie navigable historic inland waters, Alaska took title to them upon its admission to the Union under the equal footing doctrine.

11. Congress both confirmed the equal footing doctrine rule of state ownership of lands underlying navigable inland waters and quitclaimed to the States the offshore submerged lands within state boundaries in the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315.

12. Congress made the Submerged Lands Act applicable to Alaska in Section 6(m) of the Alaska Statehood Act.

13. Congress defined Alaska's boundaries as coextensive with the three-mile territorial sea claimed by the United States at the time of Alaska's admission to the Union on January 3, 1959.

14. The United States claims an interest in the submerged lands within the pockets and enclaves, and also claims the submerged lands extending three miles seaward of the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration (hereinafter "1903 closing lines") where the submerged lands are more than three nautical miles from any point on the coast line of the mainland or any of the islands. The latter areas are depicted in dark blue on the map at Ex. 1.

15. Because the submerged lands within the pockets and enclaves and extending three miles seaward of the 1903 closing lines passed to Alaska at statehood under the equal footing doctrine and the Submerged Lands Act, the United States has no right, title, or interest in those lands.

16. On or about September 10, 1907, President Theodore Roosevelt reserved by proclamation an area of Southeast Alaska as the Tongass National Forest.

17. In 1908, President Theodore Roosevelt consolidated the Tongass National Forest with the Alexander Archipelago Forest Reserve and named the new entity Tongass National Forest.

18. On or about February 16, 1909, President Theodore Roosevelt enlarged the Tongass National Forest.

19. On or about June 10, 1925, President Calvin Coolidge again enlarged the Tongass National Forest. *See* Ex. 2 (map with the 1925 enlargement and resulting outer boundaries of the Tongass National Forest).

20. Although the pockets and enclaves and the submerged lands extending three miles seaward of the 1903 closing lines are within the outer boundaries of the Tongass National Forest shown on the map at Ex. 2, the reservation of lands within these boundaries did not reserve the submerged lands therein or defeat Alaska's title to them at statehood.

21. Alaska's title is adverse to and clouded by the United States' claim of title to the lands underlying the pockets and enclaves and the waters extending three miles seaward of the 1903 closing lines where the submerged lands are more than three miles from any point on the coast line of the mainland or any of the islands.

22. Unless this Court declares and establishes Alaska's rights, Alaska will continue to be injured by the United States' claims to the lands underlying the pockets and enclaves and the waters extending three miles seaward of the 1903 closing lines where the submerged lands are more than three miles from any point on the coast line of the mainland or any of the islands.

Count II: The Tongass National Forest

23. Paragraphs 1-6, 11-13, and 16-19 are realleged and incorporated by reference.

24. Alaska took title to all lands between mean high and mean low tide and three miles seaward from the coast line inside the boundaries of the Tongass National Forest when it entered the Union on January 3, 1959. *See* Ex. 2 (map showing boundaries).

25. Although the lands described in paragraph 24 are within the lines delimiting the public lands withdrawn and reserved for the Tongass National Forest, the withdrawal and reservation of lands within the boundaries did not reserve or defeat Alaska's title to those submerged lands.

26. Because Alaska took title to the lands between mean high and mean low tide and three miles seaward from the coast line inside the boundaries of the Tongass National Forest at statehood, the United States has no right, title, or interest in those lands.

27. The United States claims an interest in these lands that is disputed by Alaska and creates a cloud on Alaska's title to them.

28. The United States' claim to these lands will continue to cloud Alaska's title unless this Court declares and establishes Alaska's rights.

Count III: Glacier Bay National Monument

29. Paragraphs 1-6 and 11-13 are realleged and incorporated by reference.

30. On or about February 26, 1925, President Calvin Coolidge created Glacier Bay National Monument by issuing Proclamation 1733 under the authority of the Antiquities Act of 1906, 34 Stat. 223, 16 U.S.C. §§ 431-433.

31. The President set apart as Glacier Bay National Monument "the tract of land" lying within the boundaries described in the 1925 order. *See* Ex. 3 (1939 map depicting 1925 boundaries in purple).

32. The Antiquities Act permits the President "to declare * * * historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest * * * to be national monuments," but permits the reservation of only "the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431.

33. The primary purpose of the 1925 creation of Glacier Bay National Monument was to preserve the land left bare by the retreat of tidewater glaciers for study of the development of flora and fauna.

34. The President did not intend to include as part of the monument the lands underlying marine waters within the boundary described in Proclamation 1733.

35. Given the purposes of the monument, the President's authority to withdraw and reserve lands under the Antiquities Act did not extend to the submerged lands within the boundaries described by the 1925 reservation order.

36. On or about April 18, 1939, President Franklin D. Roosevelt expanded the area of Glacier Bay National Monument by issuing Proclamation 2330 under the authority of the Antiquities Act.

37. The Proclamation added to Glacier Bay National Monument certain public lands, including lands simultaneously excluded from the Tongass National Forest. *See* Ex. 3 (lands transferred from the Tongass National Forest

to Glacier Bay National Monument depicted between the red and green lines).

38. The primary purposes of the 1939 expansion of Glacier Bay National Monument were to set aside a refuge for brown bears and to preserve a coastal forest.

39. The lands underlying marine waters within the 1939 boundary of the newly expanded monument were unrelated to the purposes of a bear refuge and a forest preserve and therefore exceeded "the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431.

40. The President did not intend to include as part of the monument the lands underlying marine waters within the boundaries described in Proclamation 2330.

41. The President's authority to reserve lands under the Antiquities Act did not extend to the submerged lands within the boundaries described by the 1939 proclamation.

42. The State of Alaska took title to all the lands underlying marine waters within the boundaries of Glacier Bay National Monument at statehood, pursuant to the equal footing doctrine and the Submerged Lands Act.

43. The United States' claim of title to the lands underlying marine waters within the boundaries of Glacier Bay National Monument as they were drawn at statehood is adverse to and disputed by Alaska, and creates a cloud on Alaska's title to those lands.

44. The United States' claim of title to these lands will continue to cause injury to Alaska unless this Court declares and establishes Alaska's rights.

PRAYER FOR RELIEF

Alaska prays that the Court require the United States to answer Alaska's Complaint and that, after due proceedings, the Court enter a decree declaring the rights of Alaska as against the United States in the submerged lands within the Alexander Archipelago of Southeast Alaska that are enclosed behind the closing lines drawn by the United States to mark the seaward limit of inland waters at the 1903 Alaska Boundary Tribunal arbitration, together with the submerged lands extending three miles seaward from that line and the remainder of Southeast Alaska's coastline, and enjoining the United States, its privies, assigns, lessees, and other persons claiming under it from interfering with the rights of Alaska, as well as award Alaska any other relief the Court may deem just and appropriate.

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE A COMPLAINT

The State of Alaska, through its Attorney General, submits this brief in support of its Motion for Leave to File a Complaint.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article III, § 2, cl. 2 of the United States Constitution and 28 U.S.C. § 1251(b)(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315, which is incorporated by reference into the Alaska Statehood Act, § 6(m), Pub. L. 85-508, 48 U.S.C. note prec. § 21, and the Antiquities Act of 1906, 16 U.S.C. §§ 431-433. Pertinent provisions of these statutes are reproduced in the Appendix. This case also involves the requirement in Article IV, § 3 of the United States Constitution that all new States must be admitted to the Union on an equal footing with all other States. *See Coyle v. Smith*, 221 U.S. 559 (1911).

STATEMENT OF THE CASE

Lands at Issue. The State of Alaska seeks to quiet title to the lands underlying marine waters in Southeast Alaska. Southeast Alaska comprises a narrow strip of mountainous mainland and the Alexander Archipelago —a group of over 1000 islands nearly 600 miles long and 100 miles wide—and contains more than 13,000 miles of shoreline. It is approximately the size of the State of Washington. The lands subject to this action include all lands underlying marine waters within the

Tongass National Forest, created in 1907, and all lands underlying marine waters within Glacier Bay National Monument, created in 1925. The Tongass and Glacier Bay reservations encompass nearly all Southeast Alaska. *See* Exs. 1-3 (maps).

The marine waters of Southeast Alaska are vitally important to the thirty-three coastal communities and numerous tiny settlements there. Fishing is the area's largest private industry, providing the economic base for many Southeast towns. The towns of Southeast Alaska, including the State's capital, Juneau, generally are accessible only by plane or boat.[1] The water forms passages that run among the islands and serve as routes of transportation from one town to another, and even from one part of town to another. In Ketchikan, for example, a small ferry takes passengers, cars, and freight across Tongass Narrows to Ketchikan International Airport, on a nearby island. The town of Craig spans two islands connected by a causeway. The sounds, straits, canals, channels, and narrows of Southeast Alaska—known collectively as the Inside Passage—form its "roads." The state ferry system that travels through these waters is thus aptly called the Alaska Marine Highway.

The Tongass National Forest was established in 1907 and consolidated with a previously created forest reserve in 1908. Proclamation of Sept. 10, 1907, 35 Stat. 2152; Executive Order 908, July 2, 1908. It was substantially enlarged in 1909, in an executive order that delineated its exterior boundaries so as to enclose a huge area that included the mainland of Southeast Alaska, the islands of the Alexander Archipelago, the high seas extending as

[1] The only communities in Southeast Alaska with roads connecting to the continental road system are Haines, Skagway, and tiny Hyder, which has no bank, school, or medical care provider.

far as sixty miles to the west of the Archipelago, and other marine waters. Proclamation of Feb. 16, 1909, 35 Stat. 2226. While the exterior boundaries of the forest thus encompassed marine waters, the United States did not intend to reserve the submerged lands as part of the forest. It was enlarged again in 1925, when the boundaries were extended to enclose both lands skirting the newly created Glacier Bay National Monument and adjacent marine waters. Proclamation of June 10, 1925, 44 Stat. 2578; *see* Ex. 2 (map). Much of this extension was transferred to Glacier Bay National Monument in 1939. *See infra* note 12.

While most of the marine waters within the boundaries of the Tongass National Forest are within three miles of shore—and thus would pass to the State under the terms of the Submerged Lands Act, 43 U.S.C. § 1311—some pockets and enclaves are more than three miles from the shore of the mainland and any islands. *See* Ex. 1 (map). The State believes that all of these marine waters are historic inland waters overlying land to which it took title at statehood under the equal footing doctrine. Despite the location of the enclave strips and pockets more than three miles from shore in waters surrounded by and closely connected to great bodies of land, the United States disputes their historic status as inland waters. The legal effect of this position, if accepted, would be a contraction of the State's constitutional and statutory entitlement to submerged lands.

The State also claims title to the submerged lands that at statehood were within the boundaries of Glacier Bay National Monument, now Glacier Bay National Park and Preserve. This monument was created in 1925 to preserve for study land areas left barren by retreating glaciers. The original reservation boundaries encompassed

the marine waters of Glacier Bay itself. In 1939 the size of the monument was nearly doubled. A large part of the addition was transferred out of the Tongass National Forest, including ocean areas extending three miles into the Pacific Ocean. The main purposes of the 1939 expansion were to create a bear sanctuary and to preserve Alaska's coastal forest. While the exterior boundaries of the monument encompass marine waters, *see* Ex. 3 (map), the United States did not intend to reserve the submerged lands.

Basis of Alaska's Title Claims. The State bases its claim of title to these lands both on longstanding principles of state sovereignty—embodied in the equal footing doctrine—and on the Submerged Lands Act of 1953, applied to Alaska at statehood.

When Alaska became a State on January 3, 1959, it entered the Union with all the powers of sovereignty and jurisdiction enjoyed by the original thirteen States. *See Coyle v. Smith*, 221 U.S. 559, 573 (1911). As such, Alaska entered the Union as a sovereign entity, just like each of the original States did following the American Revolution. *Martin v. Waddell*, 41 U.S. 367, 410 (1842); *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845). As sovereign successors to the Crown, the thirteen original States—and thus, when it entered the Union, Alaska—acquired title to the beds of navigable waters.

The principle that title to submerged lands is an attribute of sovereignty developed from early common law that recognized the Crown's title to beds of navigable waters both in England and in the colonies. *See Shively v. Bowlby*, 152 U.S. 1, 11-13 (1894); *Martin v. Waddell*, 41 U.S. at 410. The sovereign needed title to such lands to control navigation, fishing, and other commercial activity. *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195 (1987). The United States, as territorial sovereign prior to the creation of new States, acquires title to the beds of navigable waters of federal territories and holds them in trust for the future States that might be erected out of those territories. *See Borax Consolidated, Ltd. v. City of Los Angeles*, 296 U.S. 10, 15 (1935).

Upon the admission of a new State to the Union, the title of the United States to lands underlying inland navigable waters within the State passes to the State, as an incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for the purposes of navigation in interstate and foreign commerce. *United States v. Oregon*, 295 U.S. 1, 14 (1935). The sovereign lands that pass to each State include lands beneath inland waters navigable in fact, *Illinois Central R.R. v. Illinois*, 146 U.S. 387 (1892); tidelands, which consist of the lands between mean high and mean low tide, *Mann v. Tacoma Land Co.*, 153 U.S. 273, 283 (1894); and lands covered by tidally influenced water, regardless of its navigability, *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 481 (1988).

Title to lands underlying offshore marine waters below low tide became the subject of controversy in the 1930s, and this Court determined that the federal government had paramount rights and power over these lands in 1947. *See United States v. California*, 332 U.S. 19 (1947). Congress responded by granting these offshore submerged lands within state boundaries to the States in the Submerged Lands Act, 43 U.S.C. §§ 1301, 1311. The Alaska Statehood Act provided that Alaska would have the same rights given existing States in the Submerged Lands Act of 1953, which codified the States' title to all lands be-

neath both inland navigable waters and offshore marine waters within their boundaries. Alaska Statehood Act, Pub. L. 85-805, 48 U.S.C. note prec. § 21.

This Court has recognized that this automatic transfer of title to submerged lands to the State does not occur where the United States has conveyed them to a third party prior to statehood, *Shively v. Bowlby*, 152 U.S. at 48, or where the United States retains them for a public purpose, *United States v. Alaska*, 521 U.S. 1, 32 (1997). To establish that the United States has retained title to submerged lands, a court must determine both that the United States intended to include submerged lands within a reserve and that it intended to defeat the State's title to the lands. *Utah Div. of State Lands*, 482 U.S. at 202. Courts begin this inquiry with a strong presumption of state title and will not infer an intent to defeat a future State's title unless that intention was definitely declared or otherwise made plain. *United States v. Alaska*, 521 U.S. at 32.

REASONS FOR GRANTING ALASKA'S MOTION FOR LEAVE TO FILE A COMPLAINT

The Court's original jurisdiction is appropriate in this case. Article III, § 2 of the Constitution provides that the "Court shall have original jurisdiction" in all cases "in which a State shall be a party." Congress has further defined this jurisdiction by providing in part that the Court shall have original but not exclusive jurisdiction over all controversies between the United States and a State. 28 U.S.C. § 1251(b)(2). While Supreme Court jurisdiction over this action accordingly is not exclusive, the case raises a type of dispute over which the Court traditionally has exercised its original jurisdiction.

I. THE COURT HISTORICALLY HAS EXERCISED ORIGINAL JURISDICTION TO RESOLVE COASTAL BOUNDARY DISPUTES.

This Court traditionally has exercised its original jurisdiction to resolve disputes between the United States and the States, as well as among States themselves, involving the ownership of offshore submerged lands. *See, e.g., California* ex rel. *State Lands Comm'n v. United States*, 457 U.S. 273, 277 n.6 (1982) (coastal boundary disputes are appropriately brought as original actions in the Supreme Court). Indeed, in the only exception to this practice, a case the United States initiated in district court, the Court suggested that an original action would have been more appropriate:

> It would appear that the case qualifies, under Art. III, § 2, cl. 2, of the Constitution, for our original jurisdiction. We are not enlightened as to why the United States chose not to bring an original action in this Court. [*United States v. Alaska*, 422 U.S. 184, 186 n.2 (1975).]

That case raised the same type of issue presented in Count I of Alaska's complaint in this case—whether a body of water constitutes historic inland waters. *See id.* at 185.[2] Original jurisdiction is just as appropriate here.

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[2] A commentator on the Court's discretionary exercise of its original jurisdiction has noted that the Court "readily takes cases involving tidelands or other property and state-federal boundary cases" because they are "comparable" to boundary disputes between states. V.L. McCusick, *Discretionary Gatekeeping: The Supreme Court's Management of Its Original Docket*, 45 Maine L. Rev. 185, 200 (1993). The Court has long recognized that interstate boundary disputes are appropriate for its original jurisdiction, as the original jurisdiction grant in Article III evolved directly from draft constitutional provisions providing for the resolution of interstate boundary disputes. *Missouri v. Illinois*, 180 U.S. 208, 220-224 (1901).

In addition to its general subject matter, other aspects of this case confirm its suitability as an original action. It raises issues that are initially important both to Alaska and to other coastal States. Further, the Supreme Court has developed a unique expertise in coastal boundary issues that the lower courts do not share. This case also raises a particular boundary issue that only this Court can definitively resolve.

The question whether the pockets and enclaves in the midst of Southeast Alaska are historic inland waters is strikingly similar to the question presented in *United States v. Louisiana (Alabama and Mississippi Boundary Case)*, 470 U.S. 93 (1985). While Southeast Alaska is made up of many islands, it is a coherent region spotted with communities with shared geographic features, weather, lifestyles, and history. The marine waters that join these islands and their communities connect them so closely that they serve just as a highway system would in the contiguous 48 States. Further, the enclaves within these channels and straits are quite close to the land areas that surround them on all sides. Deeming these enclaves to be distinct from the surrounding state waters would be difficult to reconcile with the view from water; land is close by on at least two sides and boaters traveling from island to island cannot detect the enclaves, as they are indistinguishable visually from the rest of the Inside Passage. The waters of Southeast Alaska are so much a part of the State—and vital to the flow of commerce and transportation of residents within it—that the effect of recognizing the enclaves would be similar to creating large areas of exclusive federal jurisdiction within Massachusetts or Nebraska. Such a thing is unthinkable; yet the United States asserts that the southeast part of the State of Alaska is interspersed with nicks and slices of federally-owned territorial seas. *See, e.g.*, National Oceanic and

Atmospheric Administration Nautical Chart No. 17320, Coronation Island to Lisianski Strait (14th ed. 1991); Ex. 1 (map depicting such lands in red).[3]

The title dispute raises a second issue of concern to other States. Alaska's title claim to the submerged lands of the Tongass National Forest is in dispute because the overlying marine waters were within the boundaries of the reservation at statehood. The disputed interests in the submerged lands of the Tongass National Forest reservation—combined with those of the Glacier Bay Monument prestatehood reservation—cover nearly all the submerged lands of Southeast Alaska. Retention of such a vast area of submerged lands would deprive Alaska of admission to the Union on an equal footing. The Court has held that title to certain submerged lands is "an inseparable attribute of the equal sovereignty guaranteed to [the State] on admission." *United States v. Louisiana*, 363 U.S. 1, 16 (1960). *See supra* at 4-5. Such a threat to the sovereignty guaranteed the State surely warrants plenary consideration by this Court.

Other States should be concerned about the prospect that the United States has retained such a large percentage of a State's sovereign lands. Southeast Alaska contains one quarter of the State's shoreline, and a much larger percentage of the State's temperate shores. The United States' retention of so much of a new State's equal footing doctrine lands would erode the principle that a State enters the Union with all the same attributes of sovereignty as preceding States. In such cases, a State's admission would be impermissibly conditioned by the reten-

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[3] Until 1988, when the United States extended its territorial seas to twelve miles, *see* Proclamation 5928, 54 Fed. Reg. 777 (1988), the United States asserted that areas more than three miles seaward of the coastline were high seas.

tion of Federal control over essential state functions.[4] *Cf. Coyle v. Smith, supra* (Congress' limitation upon Oklahoma's choice of capital invalid as a violation of the equal footing doctrine).

This case also is appropriate as an original action because it presents issues this Court is uniquely situated to resolve. Although the Submerged Lands Act simply allocated submerged lands domestically between the coastal States and the United States, the Court for Submerged Lands Act purposes has adopted the definitions of the International Convention on the Territorial Sea and Contiguous Zone (hereafter "Convention"), 15 U.S.T. (pt. 2) 1607, T.I.A.S. No. 5639. *United States v. California*, 381 U.S. 139, 161-165 (1965). The Court's longstanding practice of hearing coastal boundary disputes as original actions has resulted in a unique expertise in interpreting and applying the Convention to the complex historic and cartographic facts presented in Submerged Lands Act cases.[5] The district

[4] While the Court found in *United States v. Alaska* that the equal footing doctrine does not prohibit federal retention of some tidelands at statehood for a public purpose, 521 U.S. at 32, it did not consider the effect on equal footing of retention of a significant percentage of a new State's tidelands.

[5] *See, e.g., United States v. Alaska*, 521 U.S. at 8-11 (baseline and historic waters provisions), 22-27, 31-32 (island and low-tide elevation provisions); *Alabama and Mississippi Boundary Case*, 470 U.S. at 100-101 (historic waters provisions); *United States v. California*, 447 U.S. 1, 5-8 (1980) (baseline and permanent harbor work provisions); *United States v. Louisiana*, 420 U.S. 529, 530 (1975) (accepting report of special master addressing baseline, historic waters, and juridical bay provisions); *United States v. Louisiana*, 394 U.S. 11, 36-40 (1969) (permanent harbor work provisions), 40-47 (low-tide elevation provisions), 48-60 (juridical bay provisions); *United States v. California*, 381 U.S. at 169-170 (juridical bay provisions), 172-175 (historic waters provisions), 175 (roadstead provisions), 176 ("line of ordinary low water" as used in Convention).

courts and courts of appeals rarely if ever address such questions.

Additionally, this case raises a critical issue that only this Court can resolve. In *United States v. Alaska*, the Court stated that inclusion of submerged lands within lines delimiting the public lands reserved before statehood reflects an intent to include the submerged lands in the reservation. 521 U.S. at 38-39, 49-51. As explained below, the United States had reasons for drawing the boundaries of the Tongass National Forest and Glacier Bay National Monument to include marine waters *other than* an intent to reserve them for the purposes of the federal units being created. The *Alaska* Court may have been correct that the Executive intended to reserve submerged lands as part of the National Petroleum Reserve and the Arctic Wildlife Range—the areas at issue in that case—but to conclude without further analysis that the same is necessarily true of *all* coastal reservations encompassing marine waters would seriously prejudice coastal States. That prejudice is especially great in the case of Alaska, the State with the largest area of coastal reservations in the Union.

This Court should clarify whether its approach in *Alaska* applies to prestatehood reservations where the evidence indicates that the United States did *not* intend to reserve the submerged lands within the boundary lines. Otherwise, the *Alaska* decision will continue to cast a cloud over States' title to hundreds of thousands of acres of land not at issue in that case.

II. ALASKA'S TITLE CLAIMS ARE COMPELLING.

The substantiality of the State's title claims also supports the exercise of original jurisdiction in this case.

A. The Waters of the Alexander Archipelago Are Historic Inland Waters of the United States.

Article 7(6) of the Convention "indicates that a body of water can qualify as inland waters if it is a 'historic bay.'" *Alabama and Mississippi Boundary Case*, 470 U.S. at 100. In the *Alabama and Mississippi Boundary Case*, the Court outlined the showing necessary to qualify a body of water as a historic bay:

> The term "historic bay" is not defined in the Convention, and there is no complete accord as to its meaning. The Court has stated that a historic bay is a bay "over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations." The Court also has noted that there appears to be general agreement that at least three factors are to be taken into consideration in determining whether a body of water is a historic bay: (1) the exercise of authority over the area by the claiming nation; (2) the continuity of this exercise of authority; and (3) the acquiescence of foreign nations. * * * In addition, there is substantial agreement that a fourth factor to be taken into consideration is the vital interests of the coastal nation, including elements such as geographical configuration, economic interests, and the requirements of self-defense. [470 U.S. at 101-102 (footnote and citations omitted).]

At trial before a special master, Alaska can present evidence on each of these factors to support its claim of historic title to the waters of the Alexander Archipelago. This evidence will include the United States' *own* assertions that these waters are inland waters. As demonstrated in the *Alabama and Mississippi Boundary Case*, such specific assertions of the waters' status are critical in evaluating a historic title claim. 470 U.S. at 107-110; *see also United States v. Alaska*, 521 U.S. at 14. In fact, the Court relied upon precisely this kind of evidence in the *Alabama and Mississippi Boundary Case* in holding that the United States had exercised continuous authority over Mississippi Sound for a long period of time.

In the course of the 1903 Alaska Boundary Tribunal,[6] the United States made several unequivocal declarations that the waters of the Alexander Archipelago were inland waters of the United States.[7] The United States characterized its position as being entirely in accord with international law and dictated by the geographical configuration:

> [The political coastline] is an imaginary line which the law imposes as a basis [for jurisdiction]. But for the purposes of international law, instead of follow-

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[6] The Alaska Boundary Tribunal convened in 1903 pursuant to a treaty between the United States and Great Britain for the settlement of questions regarding the boundary line between the territory of Alaska and Canada. The general area of concern was Southeast Alaska. *See* Report of the Special Master, *United States v. Alaska*, No. 84, Orig. (March 1996) at 61.

[7] The United States was not the first to successfully assert dominion over the waters of the Alexander Archipelago. It merely continued Russia's exercise of authority over these waters to protect that country's trade interests in its colony and to prevent illicit traffic in liquor and weapons with the coastal Natives. In its case before the 1903 Alaska Boundary Tribunal, the United States admitted that after an initial protest, it had ultimately recognized Russian sovereignty over the northwest coast and in 1845 warned American vessels not to "frequent the interior seas, gulfs, harbors, and creeks upon that coast at any point north of latitude 54° 40'." 1 *Proceedings of the Alaska Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (1903-04), Part II, Case of the United States, p. 72.

> ing all the convolutions and sinuousities of the [physical] coast, it is permitted to go across the heads of bays and inlets, and it is in that particular that the rule of international law comes in as to the width of bays and inlets, either 6 or 10 miles. We are not encumbered with that question, because the British Case contends that they must be 10 miles, and we do not dispute it, and these outside inlets are 10 miles. * * * The minute you establish it, the minute you fix it, all waters back of it, whether they are waters in the Archipelago there of Alexander or the Archipielago de Los Canarios, of Cuba, they all became, as Hall says, salt-water lakes: they are just as much interior [or inland] waters as the interior waters of Loch Lomond * * *. [7 *Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (1903-04), Argument of Hannis Taylor, p. 611.]

The federal government thus viewed the political boundary of Alaska as skirting the outer edge of the archipelago rather than following the mainland's actual coastline:

> The boundary of Alaska—that is, the exterior boundary from which the marine league is measured—runs along the outside edge of the Alaskan or Alexander Archipelago, embracing a group composed of hundreds of islands. When "measured in a straight line from headland to headland" at their entrances, Chatham Strait, Cross Sound, Sumner Strait and Clarence Strait, by which this exterior coast line is pierced, measure less than ten miles. [*Id.*, Vol. 5, Part I, Argument of the United States, pp. 15-16.[8]]

The United States publicly defended its position on the inland water status of the Alexander Archipelago between

[8] The United States offered more detailed delimitation and comments in its countercase. *See id.*, Vol. 4, Part I, Countercase of the United States, pp. 31-32.

1903 and 1971. In 1964, the United States even reiterated its stance in briefing to this Court. Although the United States had refined its rationale since its 1903 expression and had begun to articulate a rule for straits leading to inland waters, its conclusion as to the status of the waters remained the same:

> Wherever the United States has insisted on the right of innocent passage through straits, denying them the status of inland waters, the claim has rested on the character of the strait as a passageway between two areas of high seas. No such right is claimed as to a strait leading only to inland waters. Such a strait is treated as a bay. Examples of this have already been discussed, *including the straits leading into the Alaskan Archipelago* * * * straits leading to waters between Cuba and its encircling reefs and keys, and Chandeleur Sound. [Ex. 4 (Brief for the United States in Answer to California's Exceptions to the Report of the Special Master at 130-131, *United States v. California*, No. 5, Orig. (October Term, 1964) ("United States Brief in No. 5, Orig.") (footnote and additional internal citations omitted; emphasis added).[9]]

In distinguishing the treatment of the Alexander Archipelago from the straight baselines rule suggested by California in that case, the United States indicated no retreat from its characterization of the waters behind the ten-mile closing lines as inland. Ex. 5 (United States Brief in No. 5, Orig. at 105-107). To the contrary, its presentation to the Court was yet another "public acknowledgment of the official view" that the waters of the Alexander Archipelago "constitute inland

[9] The United States made clear that "the Alaskan Archipelago" was the Alexander Archipelago by referring to an earlier portion of its brief where it had quoted the same passages from the Alaska Boundary Tribunal Proceedings presented herein. Ex. 5 (United States Brief in No. 5, Orig. at 105-107).

waters of the Nation." *Cf. Alabama and Mississippi Boundary Case*, 470 U.S. at 109-110 (United States' concession in earlier brief before the Court that Mississippi Sound was inland waters represented "public acknowledgment of the official view that Mississippi Sound constitutes inland waters of the Nation").

The foregoing demonstrates that the United States asserted authority over the waters of the Alexander Archipelago continuously from at least 1903 until well after Alaska joined the Union on January 3, 1959. The only remaining question under the Court's historic waters analysis is whether foreign nations acquiesced to the claim. They clearly did. Indeed, rather than protesting, foreign nations relied upon the United States' claims of inland waters status for the waters of the Alexander Archipelago in pursuing their own boundary claims.

Great Britain, for example, acquiesced to the United States' position at the 1903 Alaska Boundary Arbitration that the political coastline of the Alexander Archipelago ran along the outside of the islands and that the waters of the Archipelago were inland waters. *See* 3 *Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (1903-04), Part III at 79; *id.*, Vol. 4, Part III at 26-32 (British case); *id.*, Vol. 5, Part I at 15-16, and *id.*, Part VII at 611 (United States' case noting British agreement with United States' position). Norway not only acquiesced; it cited the United States' position in support of its claim in the *Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116. *See* Report of the Special Master, *United States v. Alaska*, No. 84, Orig. (March 1996) at 95. Norway's adversary of the *Fisheries Case*, the United Kingdom, also cited the United States' position at the 1903 Alaska Boundary Arbitration, as well as the ten-mile closing line rule for bays and straits leading to

inland waters, in support of its position in their dispute. *Id.* at 96-97.

Thus, when Alaska was admitted to the Union, the water areas of the Alexander Archipelago were historic inland waters. The United States had continuously claimed the areas as such from at least the turn of the century until Alaska's admission, a claim in which foreign nations had acquiesced.

A ruling in Alaska's favor on its title claim to the lands underlying these historic waters would not adversely affect the United States' foreign policy obligations or objectives. Recognition of the inland status of the waters of the Alexander Archipelago is entirely consistent with the Convention. Nothing in the Convention—which the United States ratified on March 24, 1961, *Alabama and Mississippi Boundary Case*, 470 U.S. at 106, more than two years after Alaska was admitted to the Union—required a change in the United States' position claiming the waters of the Alexander Archipelago as inland waters. Such a claim is permissible both under Article 4, which authorizes the use of straight baselines to enclose inland waters with a "fringe of islands" like the Alexander Archipelago, and under Article 7(6), which authorizes claims to historic bays.

Indeed, United States officials continued to assert that the waters of the Alexander Archipelago constitute inland waters after the Convention was ratified. State Department Geographer Dr. G. Etzel Pearcy published an article in 1959 explaining the principles of the Convention. G.E. Pearcy, *Measurement of the U.S. Territorial Sea*, Dep't St. Bull. 963 (June 29, 1959). Pearcy intimated in his article that "the archipelago along the southeast coast of Alaska" required the use of straight baselines under the

Convention. *Id.* at 971.[10] He subsequently prepared charts showing straight baselines along the coast of the Alexander Archipelago. Examples of these charts are included in *Provisional U.S. Charts Delimiting Alaskan Territorial Boundaries: Hearing Before the Senate Comm. on Commerce*, 92d Cong., 2d Sess. (1972). The Coast Guard and the Interior Department Bureau of Commercial Fisheries relied on these charts for law enforcement purposes throughout the 1960s. *See* Ex. 6 (correspondence by the Coast Guard and Interior Department Bureau of Commercial Fisheries regarding Pearcy Charts).

The United States did not disclaim the inland-water status of the Alexander Archipelago until 1971, when it published a series of charts depicting the waters as territorial seas with several enclaves of high seas more than three miles from the surrounding shores. *See* Report of the Special Master, *United States v. Alaska*, No. 84, Orig. at 166-167. This was the first time the United States affirmatively disclaimed the Archipelago's inland water status, long after Alaska's title had ripened. *Cf. Alabama and Mississippi Boundary Case*, 470 U.S. at 111-114 (disclaimer first made in publication of charts in 1971 insufficient to divest States of submerged lands underlying Mississippi Sound where historic title had ripened).

In response to Alaska's protests, the United States considered adopting straight baselines under Article 4 of the Convention. That effectively would have marked a return to the position the United States had consistently taken from 1867 until 1971—*i.e.*, that the waters of the Alexander Archipelago were inland waters. Two successive State Department legal advisers concluded that the United States could employ straight baselines that were "fully

[10] The United States' historic treatment of the waters as inland waters effectively yielded the same result.

consistent with the most conservative reading of Article 4" of the Convention and would have no adverse effect on the United States' international relations. Ex. 7 (Jan. 16, 1973 memorandum from Legal Adviser Brower to various federal officials at 2). One adviser even concluded that a continued refusal to use straight baselines could not be justified: "We do not believe the use of such a system will have a negative impact on our Law-of-the-Sea negotiating position, *nor do we believe a continued refusal to use such a system is justifiable* in light of the fact that it is so clearly appropriate to this situation." Ex. 8 (Aug. 30, 1972 memorandum from Legal Adviser Stevenson to various federal officials at 12) (emphasis added).

Therefore, Alaska's claim that the waters of the Alexander Archipelago constitute historic inland waters is compelling, and entirely suitable for disposition under this Court's original jurisdiction.

B. Alaska Took Title to All Submerged Lands Within the Boundaries of the Tongass National Forest.

The enclaves within the Alexander Archipelago to which Alaska claims title fall within the outer boundaries of the Tongass National Forest. Alaska claims title not only to the land underlying the enclaves, but to all the lands underlying marine waters within the Tongass. While the forest boundaries have encompassed most of the marine waters of Southeast Alaska since before statehood, this does not deprive Alaska of its title to the submerged lands. Not only has the United States not clearly demonstrated an intent to defeat the State's title to the lands underlying marine waters in the Tongass, the proclamations did not even reserve them. *See Utah Div. of State Lands*, 482 U.S. at 202 (to overcome the strong presumption against defeat of State title to submerged lands, the United States must show that Congress both clearly intended to

include the lands within the reservation *and* affirmatively intended to defeat the future State's title to them). Reservation of the submerged lands would contribute nothing to the purposes for which Congress authorized forest reservations, which this Court has noted is a critical factor in determining federal intent. *United States v. Alaska*, 521 U.S. at 38. Congress authorized creation of national forests for only two purposes—timber protection and favorable water supply—neither of which requires or suggests inclusion of a marine area. *See United States v. New Mexico*, 438 U.S. 696, 709 (1978). The purposes of a forest did not warrant reservation of even an inland river within the boundaries of Alaska's other national forest, the Chugach National Forest, according to the Department of the Interior. *See State of Alaska*, 102 IBLA 357 (1988). Lands underlying marine waters contribute even less to timber and watershed protection, particularly submerged lands up to sixty miles from shore, such as those within the Tongass National Forest boundaries.

Moreover, the Forest Service and Congress for years acted as though the marine area within the Tongass were not part of the forest. For example, in 1950, the Solicitor's Office for the Department of Agriculture found that the Department had no authority over reclaimed tidelands contiguous to national forest lands within the boundaries of the Tongass National Forest. Ex. 9 (Dep't of Agriculture Op. of June 28, 1950). These lands did not have forest status, according to the decision, because the President's authority to reserve "public lands wholly or in part covered with timber or undergrowth" for national forests did not extend to tidelands. *Id.*

The United States has adhered to the position that tidelands are not part of the forest in recent years. In recently revoking a 1925 lighthouse reservation superimposed on the Tongass National Forest, for example, the

Bureau of Land Management distinguished between uplands and tidelands. The order stated that the uplands would continue to be subject to the forest reservation, while the post-revocation tidelands would become "public land." *See* Ex. 10 (Executive Order 4257, June 27, 1925); Ex. 11 (PLO 7056, 59 Fed. Reg. 29206-07 (June 6, 1994)). Thus, although the United States obviously believed that it had defeated the State's title to these submerged lands, it based the defeat on the lighthouse reservation, not on the forest reservation.

The United States may argue that the proclamation's inclusion of marine waters within the forest boundaries compels the conclusion that the President intended to reserve the underlying lands as part of the forest. The purpose of national forests and the United States' subsequent treatment of the submerged lands refute this argument. Nevertheless, this Court's opinion in *United States v. Alaska*, 521 U.S. 1, can be read to support the argument that a proclamation's reservation of lands within a boundary that includes marine waters expressly reserves the submerged lands and thus, by definition, satisfies the first prong of the *Utah Division of State Lands* test. *See* 482 U.S. at 202. Discussing the order that created the National Petroleum Reserve-Alaska ("NPR-A"), the *Alaska* majority stated that in describing a boundary following the ocean side of offshore islands and reefs, the order created a reserve that *necessarily* embraced certain submerged lands—specifically, tidelands shoreward of the barrier islands. 521 U.S. at 37. The majority found no inference required for the conclusion that the United States retained the tidelands within the reserve. *Id.* n.1.

The *Alaska* Court was not considering where the boundary line was located; the parties did not dispute that the boundary was drawn to include some marine waters and therefore in that sense necessarily embraced them. *Id.*

at 31. The boundaries of the reservations in *Montana v. United States,* 450 U.S. 544 (1981), and *Utah Division of State Lands* in this sense also "embraced" equal footing doctrine lands. The *Alaska* Court seemed to say that inclusion of marine waters necessarily indicated that the United States intended the submerged lands to be *reserved* and administered for the same purpose as the uplands—in other words, that no other explanation could exist for boundaries to include lands underlying marine waters. Paradoxically, a presumption remains that boundaries that include lands underlying "bodies" of water do not reserve the submerged lands. *See* 521 U.S. at 37, discussing *Montana* and *Utah Division of State Lands.*

The *Alaska* majority supported its analysis by also considering the purpose of the particular reservation at issue, concluding that the purpose of reserving in federal ownership all oil and gas deposits within NPR-A's boundaries would have been undermined had the deposits underlying lagoons and other tidally influenced waters been excluded. *Id.* at 38.[11] Nevertheless, the Court's discussion of the effect of the boundary line seems to stand alone. It is not clear whether this analysis applies to reservations where the drafting agency had reasons for drawing boundaries out in marine waters *other than* an intent to reserve the submerged lands—the situation with respect to the Tongass National Forest. After the 1925 proclamation, the Tongass boundaries extended around nearly the entire Alexander Archipelago, excluding Glacier Bay National Monument. Rather than extend around each of the hundreds of islands included, it encompasses the entire body of islands. At its southwest corner, the north-south boundary line meets the east-west line *sixty miles out in the ocean. See* Ex. 2 (map); Proclamation of Feb. 16, 1909, 35 Stat.

[11] The Court also found that the Artic Wildlife Range reservation expressly referred to certain submerged lands. 521 U.S. at 50.

2226. This line was not even within the *Nation's* boundaries as the United States defined them at the time. *See* note 3, *supra.* These broad strokes obviously did not reflect a need or intent to reserve the lands underlying such distant marine waters as a national forest, and thus the language of *Alaska* should not be applied categorically to this reservation.

Only this Court can clarify how broadly the *Alaska* language applies. If that language means that whenever a boundary line includes marine waters, a court must find without further analysis that the underlying lands are automatically reserved as well, then this Court unnecessarily developed a sweeping new rule that could affect title to hundreds of thousands of acres of state lands never at issue in *Alaska.* Courts should consider whether the United States had reasons for drawing such a boundary other than an intent to reserve the submerged lands. A rule that finds that submerged lands within the boundaries of a reservation are necessarily reserved—without regard to actual intent—would be irreconcilable with the long-standing presumption of State title to submerged lands under the equal footing doctrine, *see, e.g., Utah Div. of State Lands,* 482 U.S. at 197-198, and the recent clarification that the same presumption applies to lands that pass to a State under the Submerged Lands Act, *see Alaska v. United States,* 521 U.S. at 34.

C. Alaska Took Title to All Submerged Lands Within the Boundaries of Glacier Bay National Monument.

The State also took title to the submerged lands within the boundaries of Glacier Bay National Monument at statehood. The purposes of the monument demonstrate that the United States did not intend the submerged lands underlying the marine waters within the boundaries to be lands reserved for and administered by the National Park

Service. Further, even if that had been the intent of the two proclamations that primarily delineated the boundaries, the President's limited Antiquities Act authority did not extend to these lands.

The Department of the Interior employees who designated the boundaries of Glacier Bay National Monument extended them into marine waters apparently as a matter of convenience, not because they intended the President to reserve the submerged lands under the Antiquities Act. The Antiquities Act permits the President to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. 16 U.S.C. §§ 431-433. The features of the Glacier Bay area that federal officials wanted to preserve were unrelated to the marine waters.

Glacier Bay National Monument was created in 1925 by Presidential Proclamation[12] after a campaign by the Ecological Society of America, spearheaded by a plant ecologist named William Cooper.[13] Cooper had visited Glacier Bay in 1916 and was intrigued by the unique opportunity to study the regrowth of plant and animal life in a landscape left completely barren by retreating

[12] A 1924 executive order withdrew a large area surrounding Glacier Bay for consideration as a national monument. Ex. 15 (Executive Order 3983, Apr. 1, 1924). The 1925 proclamation created a monument about half the size of this area. Ex. 16 (Proclamation 1733, Feb. 26, 1925, 43 Stat. 1988). Much of the area considered for, but not included in, the monument in 1925 was added instead to the Tongass National Forest. *See* Ex. 2 (1925 addition to the forest highlighted on this map). Most of this area was later transferred out of the forest to the monument. *See* Ex. 3 (map).

[13] *See* Ex. 12 (Letter of Jan. 24, 1924 from First Assistant Secretary of Interior E. C. Finney to Charles C. Adams); Ex. 13 (Letter of Jan. 28, 1924 from Charles C. Adams to E. C. Finney); Ex. 14 (Letter of Feb. 21, 1924 from President of the Ecological Society of America to President Calvin Coolidge).

glaciers. He laid out nine one-meter grids on the soil at variable distances from the glaciers' termini, and returned to study them at five-year intervals. Thus, the original proclamation stated as the reasons for creation of the monument the existence of accessible glacial areas; preservation of the great variety of forest, including mature areas, bodies of youthful trees that had grown since the retreat of the ice, and barren stretches that would become forested in the next century; and the unique opportunity for the scientific study of glacial behavior and the resulting development of flora and fauna. The boundaries of the monument as it existed from 1925 to 1939 encompassed the lands surrounding Glacier Bay on the west, north, and east, and cut across the bay on the south. *See* Ex. 3 (map).

Glacier Bay National Monument was substantially expanded in 1939 when President Roosevelt signed a proclamation nearly doubling its size, making it the largest unit administered by the National Park Service.[14] This expansion was the culmination of efforts to address two concerns. The first was a widespread public outcry to create a sanctuary for the Alaskan brown bear, which had become a "flagship species" for environmental groups. To the public, the fate of the Alaskan brown bear symbolized the question of whether modern Americans could live in harmony with nature or instead would repeat in Alaska the mistakes of the frontier west, such as hunting to near-extinction the buffalo in the nineteenth century.[15] The Senate Special Committee on Conservation of Wildlife Resources held a hearing in Washington, D.C. on protec-

[14] Ex. 17 (Proclamation 2330, 3 C.F.R. 83 (1939)).

[15] *See* Ex. 18 (Letter of Feb. 27, 1934 from William Cooper to H. C. Bryant, with attached articles and cartoon).

tion of the Alaskan brown bears,[16] and President Franklin Delano Roosevelt even took a personal interest in the issue.[17] Much of the land added by the expansion was justified by its desirability as a bear habitat.[18]

The second concern, as characterized by a leading conservationist at the time, was the "urgent necessity * * * to preserve a museum specimen of the great coastal forests of Alaska, including the splendid Sitka Spruce."[19] This wish was addressed by the Park Service's plan to include the coastal uplands to the west of the monument, which at the time was part of the Tongass National Forest.[20] The Forest Service strongly approved of this idea, because it alleviated the pressure to create a national park on Chichagof Island or Admiralty Island, also part of the Tongass, which the Forest Service opposed because it considered these islands to be prime areas for a pulp timber industry.[21]

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16 *Protection and Preservation of the Brown and Grizzley Bears of Alaska: Hearing Before the Special Sen. Comm. on Conservation of Wild Life Resources*, 71st Cong. (1932).

17 Ex. 19 (June 6, 1934 memorandum from President Roosevelt to Harold Ickes, with attached letter); Ex. 20 (Jan. 25, 1939 memorandum from President Roosevelt to Secretary of Agriculture).

18 Ex. 21 (Letter of Oct. 22, 1934 from A.E. Demaray to Secretary of Interior); Ex. 22 (Letter of Dec. 10, 1934 from Harold Ickes to Secretary of Agriculture).

19 *See* Ex. 23 (Letter of Jan. 13, 1932 from conservationist Frederick Vreeland to Horace Albright); *see also* Ex. 22 (Letter of Dec. 10, 1934 from Harold Ickes to Secretary of Agriculture).

20 *See Ex.* 24 (Letter of Jan. 14, 1932 from Horace M. Albright to Frederick Vreeland); Ex. 25 (Oct. 22, 1934 memoranduum from A. E. Demaray to the Secretary).

21 *See* Ex. 26 (Letter of Mar. 2, 1932 from Horace Albright to Stewart Edward White).

It appears the 1939 proclamation drew the boundaries to encompass marine waters simply for convenience. Most of the 1939 addition was simply transferred from the Tongass National Forest into Glacier Bay National Monument. *See* Ex. 3 (map). Descriptions of the proposed expansion approved by Department of the Interior officials, Department of Agriculture officials, the Governor of Alaska, and private organizations promoting the addition reported the western boundary as following "along the Pacific coast" consistently for years before the 1939 proclamation, and documents spanning the period from early 1932 to late 1938 expressly included in the description the islands off the coast.[22] The accompanying maps, however, consistently showed the western area of the extension as the entire area within the boundary of the forest to be transferred, which included an extra strip of submerged lands three miles seaward of the Pacific coast. Apparently to reconcile the written description with the maps, the description was changed to match the forest boundary shortly before it went to the President for his signature in early 1939. Thus, the contemporaneous evidence does not show the requisite clear intent of the United States to reserve the submerged lands within the boundaries as part of the monument.

In any event, the Antiquities Act authority of the President to reserve land for Glacier Bay National Monument was limited to "the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431. The purposes of Glacier

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22 *See* Ex. 27 (Letter of Jan. 13, 1933 from Commissioner Moore of General Land Office to Horace Albright); Ex. 28 (Letter of July 20, 1934 from A. E. Demaray to Commissioner of General Land Office); Ex. 29 (Aug. 10, 1934 memoranduum from J. Lee Brown to Mr. Moskey); Ex. 30 (Letter of Oct. 17, 1938 from National Park Service to Joseph Dixon); Ex. 31 (Letter of Nov. 30, 1938 from Joel Wolfsohn to National Park Service).

Bay National Monument extended only to those upland features meant to be preserved; they did not extend to submerged lands unrelated to those features. Although the National Park Service wanted the Glacier Bay reservation to be a national park—and even supported a bill before Congress proposing park status in September 1938 [23]—it eventually abandoned this idea because Congress had opened the monument to mining in 1936 and the Park Service wished to avoid criticism from conservation organizations opposed to any non-conforming uses in a national park.[24] The Park Service's political decision to expand the existing monument rather than further pursue congressional designation as a park imposed limitations on the area the President had authority to reserve and on the permissible reasons for creating the reservation.

This fact was implicitly recognized by the Department of Interior drafters of the 1939 proclamation who suddenly and without explanation recast the reasons for the monument's expansion. Despite overwhelming documentation spanning at least seven years that the paramount reasons for expanding Glacier Bay National Monument were to create a bear sanctuary and to preserve the coastal forest, the 1939 proclamation purported to limit its explanation to a reason consistent with a traditional understanding of Antiquities Act objectives—to add lands necessary for the proper care, management, and protection of "glaciers and geologic features of scientific interest." Ex. 17.

Ultimately, however, the 1939 reservation was an Antiquities Act monument, limited by statute to the

[23] *See* Ex. 32 (Sept. 15, 1938 memorandum from National Park Service to Solicitor).

[24] *See* Ex. 33 (Dec. 27, 1938 memorandum from National Park Service to Secretary of Interior); *see also* Ex. 34 (Letter of Dec. 21, 1938 from National Park Service to William Cooper).

"smallest area compatible with the proper care and management of the objects to be preserved." 16 U.S.C. § 431. Whether those "objects" were landscapes left barren by retreating glaciers, the Alaskan brown bear, the coastal forest, or glaciers themselves, inclusion of the extensive areas of submerged lands within the designated boundaries would have exceeded the limitation on the President's authority and therefore been ineffective.

Like the boundaries of the Tongass National Forest, the Glacier Bay National Monument boundaries bring into question the meaning of *Alaska*'s conclusion that boundaries drawn to embrace submerged lands under marine waters necessarily meet the first prong of *Utah Division of State Lands*. *See* 521 U.S. at 37. Review of an issue of this magnitude—whether the State of Alaska received the submerged lands that pass to all States either as a fundamental attribute of sovereignty or under the provisions of the Submerged Lands Act—should not be determined by rote application of the language in *Alaska*, directed to a significantly different situation. This is particularly true given the evidence that the United States did not have a clear intent to reserve the submerged lands and did not have the authority for such a reservation in any event. This Court should consider whether the United States had reasons for drawing boundaries to include marine waters other than an intent to reserve the underlying land for the purposes of the reservation.

CONCLUSION

The Court should exercise its original jurisdiction and decide this important case. It involves a boundary issue with national and international implications of the sort the Court historically has heard in original actions, and as to which it has special expertise. It also involves a prestatehood reservation issue that is critically important

to Alaska and cannot be resolved by any other court. Alaska has a compelling case on the merits of both issues. Therefore, the Court should grant Alaska's Motion for Leave to File a Complaint.

Respectfully submitted,

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EXHIBIT 1

Historic Waters of Alexander Archipelago

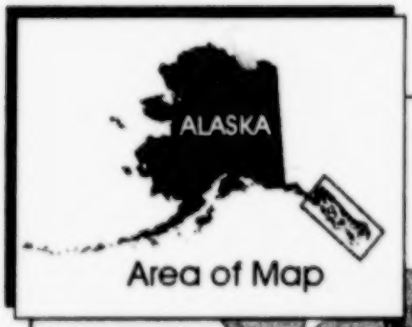
Graphic depiction of closing lines drawn by the United States at the 1903 Boundary Tribunal to mark the seaward limits of the inland waters of the Archipelago. *See 5 Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Congress, 2d Session (1903-04), Pt. I, Argument of the United States, pp. 15-16; *id.* Vol. 4, Pt. I, Countercase of the United States, pp. 31-32.

Territorial sea (3 nautical miles) and inland waters

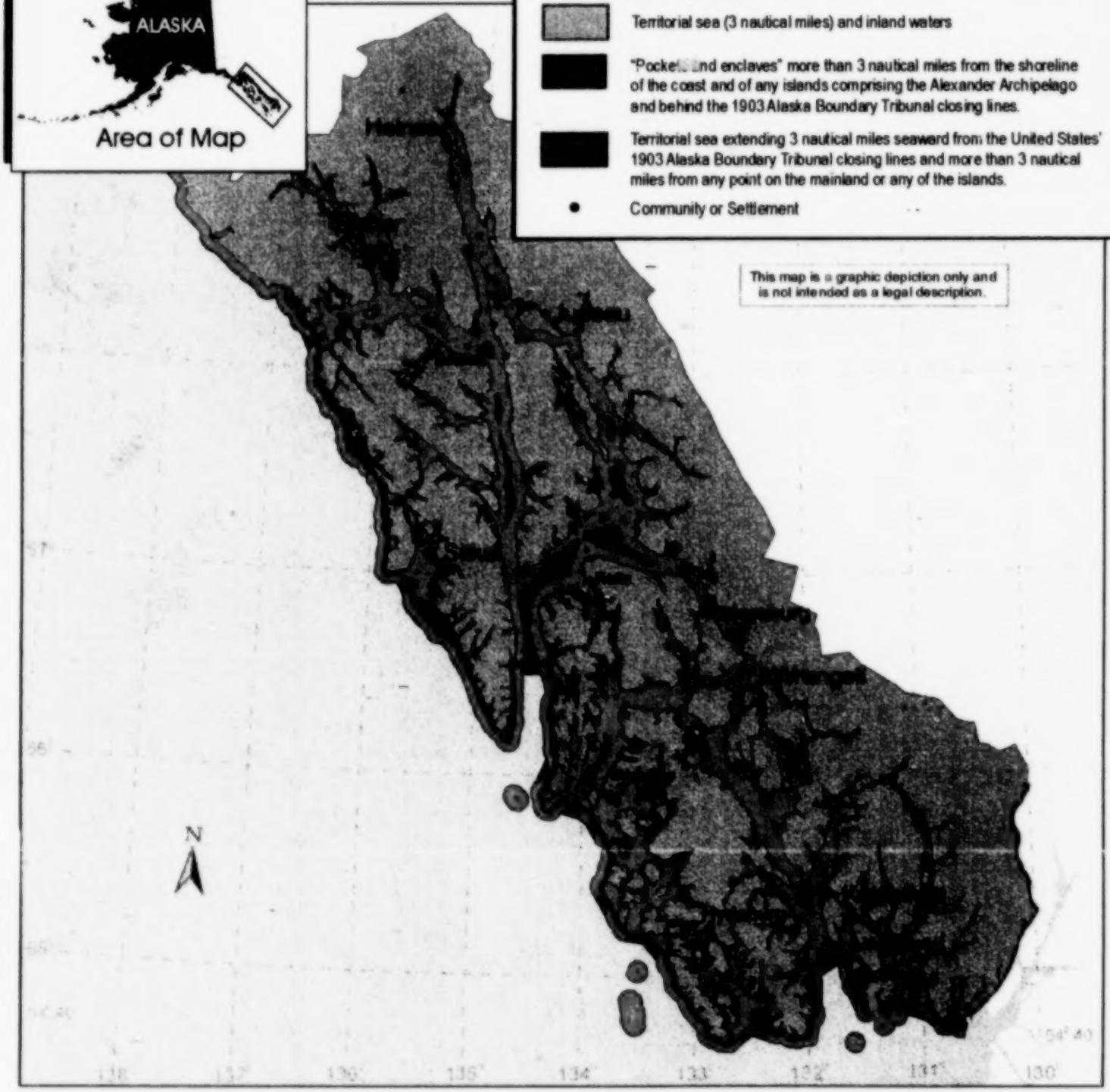
"Pocket and enclaves" more than 3 nautical miles from the shoreline of the coast and of any islands comprising the Alexander Archipelago and behind the 1903 Alaska Boundary Tribunal closing lines.

Territorial sea extending 3 nautical miles seaward from the United States' 1903 Alaska Boundary Tribunal closing lines and more than 3 nautical miles from any point on the mainland or any of the islands.

Community or Settlement



This map is a graphic depiction only and is not intended as a legal description.



Prepared by the Department of Natural Resources, Division of Mining, Land & Water - Technical & Data Management Section *October, 1999*

Exhibit 1

1e

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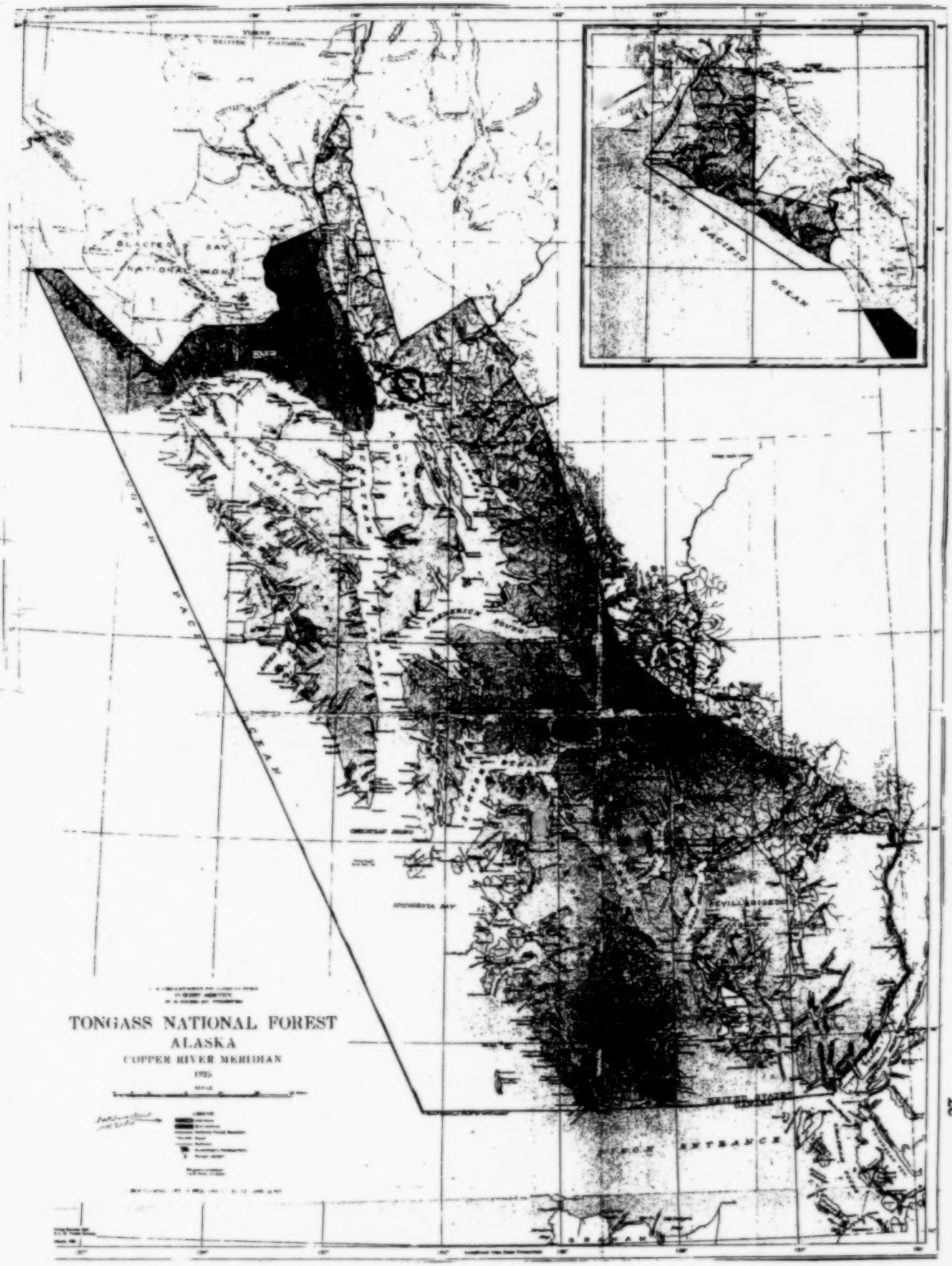
TONGASS NATIONAL FOREST
ALASKA
COPPER RIVER MERIDIAN
1925
PACIFIC OCEAN
GULF OF ALASKA
DIXON ENTRANCE

Exhibit 2

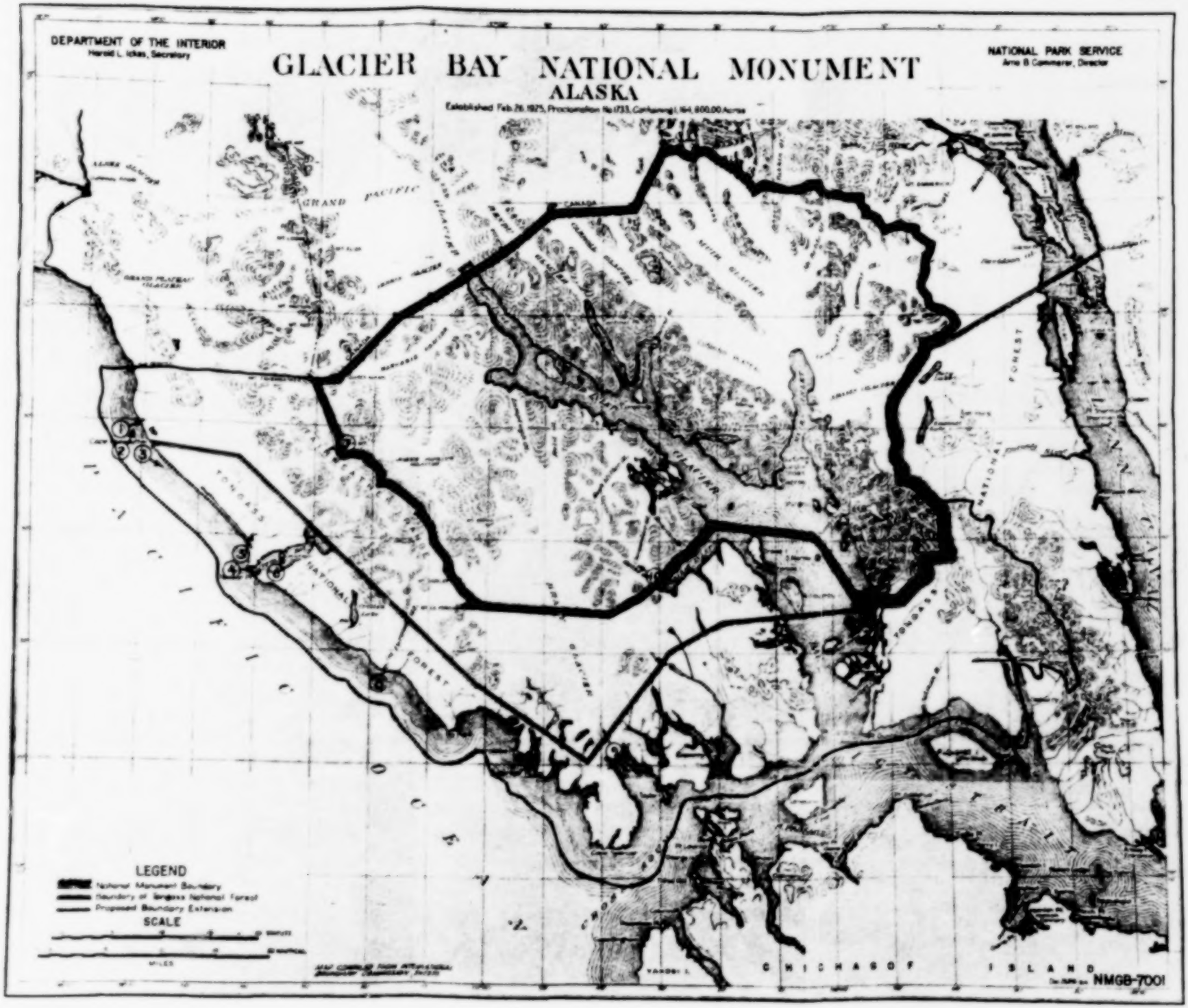
DEPARTMENT OF THE INTERIOR
Harold L. Ickes, Secretary
GLACIER BAY NATIONAL MONUMENT
ALASKA
NATIONAL PARK SERVICE
Arno B. Cammerer, Director
GRAND PACIFIC
LEGEND
SCALE
MILES
NMGB-7001

Exhibit 3

Publisher's Note:

The following page/s 4e is/are missing in the original document.

EXHIBIT 4
Pages 1-2

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tions, S. Rept. No. 1683, 49th Cong., 2d Sess., p. V (Cong. Doc. Ser. No. 2456).[103]

(d) *Straits of Magellan.*—On January 18, 1879, Secretary of State William M. Evarts wrote to Thomas O. Osborn, American Minister to Chile and the Argentine Republic, pointing out that the boundary dispute between those countries was jeopardizing the shipping of nations to whom "the Straits of Magellan are a thoroughfare," and saying that "no sufficient reason is seen why either should not be held accountable for any injury which may have been occasioned or may result to vessels and citizens of the United States." *Foreign Relations of the United States*, 1879, pp. 15-16.[104]

(e) *Straits leading to inland waters.*—Wherever the United States has insisted on the right of innocent passage through straits, denying them the status of inland waters,

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[103] Report accompanying S. 3173, 49th Cong., 2d Sess., which became the Act of March 3, 1887, 24 Stat. 475, *supra*, p. 125.

[104] In *The Banger* [1916], Prob. 181, 185, involving a prize taken in the Straits of Magellan, the court said:

"This strait connects the two vast free oceans of the Atlantic and the Pacific. As such, the strait must be considered free for the commerce of all nations passing between the two oceans.

"In 1879 the Government of the United States of America declared that it would not tolerate exclusive claims by any nation whatsoever to the Strait of Magellan, and would hold responsible any Government that undertook, no matter on what pretext, to lay any impost on its commerce through the strait."

The decision was that the strait, though open to international navigation, was, at the point of capture, assumed to be territorial water of Chile; but that only Chile could complain of the seizure as a violation of its neutrality.

the claim has rested on the character of the strait as a passageway between two areas of high seas. No such right is claimed as to a strait leading only to inland waters. Such a strait is treated as a bay. Examples of this have already been discussed, including the straits leading into the Alaskan Archipelago (*supra*, pp. 105-107), straits leading to waters between Cuba and its encircling reefs and keys (*supra*, pp. 103-105), and Chandeleur Sound (*supra*, p. 110; see also, *infra*, pp. 153-155).[105]

(f) *Islands.*—The State Department has had relatively little occasion to discuss the subject of islands as such, probably because it is universally agreed that each is entitled to its own three-mile belt, and the only serious questions have concerned the status of straits formed by particular islands. However, on May 18, 1869, Secretary of State Hamilton Fish did write to Secretary of the Navy Adolph E. Borie (1 Moore, *Digest of International Law* (1906), 713):

> The maritime jurisdiction of Spain may be acknowledged to extend not only to a marine league beyond the coast of Cuba itself, but also to the same distance from the coast line of the several islets or keys with which Cuba itself is surrounded. * * *

[105] The proper application of this principle becomes a matter of some difficulty in situations where several straits lead to the same body of inland water; and a circularity is involved in situations where the "inland" status of that body depends on whether its entrances are to be subject to the ten-mile rule or to three-mile marginal belts. It may be that some of the applications have been unduly liberal—for example, in the case of Chandeleur Sound—but this need not concern us here, for, as we shall show, even accepting those liberal applications as correct, they do not reach the situation in California. See *infra*, pp. 151-155.

EXHIBIT 5
Pages 1-4

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was entitled to more than three miles of territorial water around Cuba because the presence of many offshore reefs and islands within three miles of the Cuban coast made a three-mile belt an inadequate defensive area. Secretary Seward made the obvious reply, that the three-mile belt should be measured from the offshore islands rather than from the shore of Cuba proper. This in itself was enough to answer the Spanish contention, and of course was plainly correct. We have always conceded that every island is entitled to a three-mile belt around it. However, Secretary Seward went on to express the view, based on his examination of maps, that the "line of keys is properly to be regarded as the exterior coast line, and that the inland jurisdiction ceases there, while the maritime jurisdiction of Spain begins from the exterior sea front of those keys." Undoubtedly that is true of most of the Cuban keys, especially those closely grouped along the north coast where the principal difficulties with American shipping were arising. Whether Secretary Seward's statement must necessarily be understood as a categorical assertion that *every* islet off the Cuban coast forms part of a single exterior coast line seems doubtful;[80] but even

[80] Secretary of State Hamilton Fish, writing on May 18, 1869, to Secretary of the Navy Adolph E. Borie, referred only to the three-mile belt around each key, without suggesting that the line of keys marked the limit of inland waters (1 Moore, *Digest of International Law* (1906) 713:

"The maritime jurisdiction of Spain may be acknowledged to extend not only to a marine league beyond the coast of Cuba itself, but also to the same distance from the coast line of the several islets or keys with which Cuba itself is surrounded. Any acts of Spanish authority within that line can not be called into question, provided they shall not be at variance with law or treaties."

if it is so understood, it is by no means necessary to join them by such long closing lines as California indicates." [81] Of seventeen lines, one exceeds the ten-mile limit by 7/16 miles. So small a concession to a foreign power, in the particular geographical situation there presented, may be dismissed as *de minimis*. Certainly it does not prove a policy of claiming on our own coasts the very long lines suggested by California.[82]

California refers (Brief, 76; 108, n. 62) to the line described by the United States in the Alaska Boundary Arbitration of 1903 as the "coast line" of the Alaska Archipelago, and shows on a map that lines longer than ten miles can be drawn between islands of that group. However, those lines are not the lines described by the United States in that arbitration.[83]

---

[81] According to Naval Hydrographic Charts Nos. 2617, 2618 and 2620, the Gulf of Batabano, for which California shows closing lines of 23 miles at the east end and 59 miles at the west (Brief opposite p. 74), can be enclosed by the following lines: Punta Oriental to Cayo Piedras, 7 miles; thence to an unnamed sandy islet at about 21°48'30" N., 81°12'15" W., 10 miles; thence to Cayos de Dios, 10 miles; thence to Cayo Ingles, 4 1/2 miles; thence to Cayo Largo 7 miles; thence to Cayo Estofa, 2 miles; thence to Cayo Rosario, 7 miles; thence to Cayo Cantiles, 1 1/2 miles; thence to Cayo Avalos, 3 miles; thence to Cayos Aguardientas, 2 miles; thence to Cayo Campos, 1/2 mile; thence to Cayo Ilicacos, 1/2 mile; thence to Cayo Matias, 2 miles; thence to the Isle of Pines, 4 miles; thence to Cayos los Indios, 5 miles; thence to Cayos de San Felipe, 8 miles; thence to Punta Santo Domingo, 10 7/16 miles.

[82] The question of how maritime limits should be drawn where there are offshore islands is discussed *infra*, pp. 119-140. The present discussion is not intended to deal with that question beyond showing that the United States has not exceeded the ten-mile rule in that connection.

733-800-04—9

[83] The line claimed by the United States was described as follows (4 *Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (Cong. Doc. Ser. No. 4602), Pt. I, Counter Case of the United States, p. 32):

"In the present instance the political or legal coast line drawn southward from Cape Spencer would cross to the northwestern shore of Chichagof Island and follow down the western side of that island and of Baranof Island to Cape Ommaney; at this point it would turn northward for a short distance and then cross Chatham Strait to the western shore of Kuiu Island; thence again turning southward along that shore and along the outlaying islets west of Prince of Wales Island, the line would round Cape Muzon and proceed eastward to Cape Chacon; thence following northward along the eastern shore of Prince of Wales Island to Clarence Strait it would cross the latter at its entrance and proceed southeastward to the parallel of 54°40' at the point where it enters Portland Canal."

None of the closing lines actually described needs to exceed ten miles in length, and the United States repeatedly emphasized that none was to be drawn so as to be more than ten miles:

> When "measured in a straight line from headland to headland" at their entrances, Chatham Strait, Cross Sound, Summer Strait and Clarence Strait, by which this exterior coast line is pierced, measure less than ten miles. That fact, according to the authorities quoted in the British Counter Case, pp. 24-28, places them within the category of territorial waters. [5 *Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Cong., 2d Sess. (Cong. Doc. Ser. No. 4603), Pt. I, Argument of the United States, pp. 15-16]
>
> But for the purposes of international law, instead of following all the convolutions and sinuosities of the coast, it is permitted to go across the heads of bays and inlets, and it is in that particular that the rule of international law comes in as to the width of bays and inlets, either 6 or 10 miles. We are not

encumbered with that question, because the British Case contends that they must be 10 miles, and we do not dispute it, and these outside inlets are 10 miles. [*Id.*, vol. 7 (Cong. Doc. Ser. No. 4605), Argument of Hannis Taylor (for the United States), p. 611.]

This line [proposed by Great Britain] crosses the Yakutat Bay a distance of over 16 miles from headland to headland. It never has been claimed that under the law of nations such a line could be drawn from headland to headland a greater distance than 10 miles. [*Id.*, vol. 7 (Cong. Doc. Ser. No. 4605), Argument of Jacob M. Dickinson (for the United States, p. 844.]

Since the line described can be drawn without crossings more than ten miles long, and the United States emphasized that it was so drawn, there is no justification for California's assumption that the United States was claiming longer lines.

A similar fallacy is involved in California's reference (Brief, 108, n. 62) to the fact that by the Act of February 26, 1881, 21 Stat. 351, Congress approved an agreement between New York and Connecticut, establishing the boundary between those States in Long Island Sound. California accompanies this with a map showing that a line from Montauk Point, on Long Island, to Watch Hill Point, Rhode Island, is 14 miles long (Brief, opposite p. 108), implying that Congress approved that as a closing line. The implica-

EXHIBIT 6
Pages 1-8

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address Reply to:
Commandant
U.S. Coast Guard (OLE-
Washington, D.C.
20591

5921
22 June 1967

Dr. G. Etzel Pearcy, Geographer,
Office of Research in Economics and Science
Department of State
Washington, D.C. 20520

Dear Dr. Pearcy:

The recent extension of the fisheries jurisdiction of the United States to twelve nautical miles and the recently concluded fisheries agreements with Japan and the Soviet Union places additional requirements on Coast Guard units charged with law enforcement responsibilities.

In 1964, your office made available to the Coast Guard a series of charts illustrating baselines and the three-mile territorial sea which were drawn in accordance with appropriate provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958. These charts represented an "exercise in baseline drawing" and did not represent an official delineation of the territorial sea. However, the charts were useful as a guide for Coast

Guard operational commanders when carrying out law enforcement activities. These charts, while useful to the extent provided, did not cover all areas of the territorial sea off Alaska, Hawaii, and the outlying areas.

If your office can make available to the Coast Guard charts illustrating the extent of the contiguous fisheries zone and the territorial sea of the United States for all areas, under the jurisdiction of the United States, these charts would be extremely useful to the Coast Guard in carrying out law enforcement responsibilities.

Sincerely yours,

W.A. JENKINS
Captain, U.S. Coast Guard
Chief, Law Enforcement Division
By direction of the Commandant

UNITED STATES GOVERNMENT

Memorandum DATE: May 24, 1963

To: Regional Director, Region 5, Bureau of Commercial Fisheries, Juneau

From: Director, Bureau of Commercial Fisheries

Subject: Instructions re Baselines Charts for Alaska

Forwarded under separate cover is a set of charts of various areas of the Alaskan coastline. On these charts lines have been drawn showing 1) the waters which are internal or territorial waters under the present baselines drawn by the arcs-of-circles method following the sinuosities of the coast, plus a 24-mile closing line for bays; and 2) the waters which would become territorial waters by application of straight baselines (in addition to the 24-mile closing line for bays) following the criteria set out in the Convention on the Territorial Sea and the Continuous Zone adopted by the United Nations Conference on the Law of the Sea, Geneva, 1958.

The limits of the territorial sea using the first method are outlines in red on the charts. The additional areas of waters which would be enclosed using the straight baseline method are shaded in green. In some areas, of course, straight baselines would either not be applicable or their use would not result in additions to territorial waters beyond what would already be encompassed through the present method; therefore, in these areas no attempt has been made to draw them.

You are requested to conduct a study which will assess, on the basis of the available evidence or best estimates, the *additional* fishery resources, in terms of annual poundage and value, of present and reasonably potential use which would be reserved to American fishermen by appli-

cation of straight baselines as depicted on the charts. The data should be presented by areas (e.g., Prince William Sound) and by species insofar as a species breakdown may be practicable. In any event, data are desired on halibut, shrimp, and king crab specifically.

You are especially cautioned that these charts have *no official standing whatever* within the United States Government. No inference should be drawn from the existence of the charts except the obvious one that the United States Government is studying the matter of straight baselines. Moreover, while it is to be presumed that the lines have been drawn on the basis of an objective interpretation of the criteria contained in the Geneva Convention, there can be no assurance that if the United States were to decide to change its policy on this matter, the lines adopted would be the same as those presently shown.

I anticipate that it will be necessary and desirable for your staff to work with the staff of the Alaska Department of Fish and Game in preparing the requested study. The cautions expressed in the immediately preceding paragraph should be conveyed to such persons in the Alaska Department as may have access to the charts. Publicity as to the existence of the charts and the fact that such a study is being made should be avoided if possible within the limits imposed by the necessity to maintain good relations with the State Government.

Please arrange to make 50 copies of your study available in my office by July 15, 1963.

DONALD L. MCKERNAN

December 19, 1963

Regional Solicitor, Anchorage

Fisheries Management Supervisor, BCF, Juneau

Extent of territorial sea along U.S.-Canadian border, Dixon Entrance

Sometime ago, the 17th Coast Guard District requested and received from the Department of State a set of charts delimiting the territorial waters of the United States off Alaska. As a matter of interest, I asked their Legal Officer (Cdr. Cliff DeWolf, whom you met in Anchorage) about the extent of the territorial sea off Cape Muzon as the international boundary begins on land at that point. I was told the State Department charts show a territorial sea of three miles from Cape Muzon.

As you might expect, the charts supposedly have no "official standing" but they obviously will be the bases for determining the limits of legal authorities by the Coast Guard and concomitantly by the joint BCF-CG fisheries patrol units.

In view of your study of this particular question in the past, I knew you would be interested in this interpretaton and might have some comments.

We do not have a set of the charts but hope to obtain them soon from 17 CGD.

RONALD C. NAAB

RCNAAB: 1m

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Anchorage Region
P.O. Box 166
Anchorage, Alaska

January 23, 1964

Memorandum

To: Fisheries Management Supervisor, Bureau of Commercial Fisheries, Juneau

From: Regional Solicitor, Anchorage

Subject: Extent of territorial sea at Cape Muzon

I was interested to learn from your memorandum of December 19 that the State Department apparently recognizes a territorial sea off the southern tip of Cape Muzon.

The Alaskan Boundary Tribunal which established the international boundary between Canada and the United States in Dixon Entrance did agree that the boundary should run from Cape Muzon to the Tongass Channel. I attempted to ascertaain whether under international law a reference to a point of land established, by implication at least, a territorial sea off shore of that particular reference point but was unable to find any authority pro or con.

I think this might be worth a referral to your Washington office where it could be brought to the attention of the State Department and a committee ruling made. Apparnetly there is some conflict in the Canadian and United States views on this point.

WILLIAM W. REDMOND
Regional Solicitor

February 4, 1964

Director, BCF, Washington, D.C.

Regional Director, BCF, Juneau, Alaska

Extent of territorial sea at Cape Muzon, Alaska

Sometime ago we began investigating the extent of the territorial sea off Cape Muzon, since the international boundary between Canada and the United States apparently originates on land at this point. Our interest was initially from the standpoint of possible encroachment by Japanese or Russian vessels but greater impetus has been added with the Canadian's announcement that they will revise their territorial sea boundaries this spring.

Regional Solicitor Bill Redmond reviewe' the question but was unable to locate any precise autho ity. The issue remained in that state until recently, whe. he 17th Coast Guard District received a response to their request for a set of charts delimiting the territorial sea off Alaska as interpreted by the Department of State. We have not been provided a set of these charts but the 17th Coast Guard District Legal Officer told us that the charts showed a three mile territorial sea surrounding Cape Muzon.

We have been advised that the Department of State claimed the charts provided the 17th Coast Guard District had no "official standing." This disclamation seems somewhat irrelevant for it is obvious and, we believe, was made known to the State Department that the charts will be used for enforcement purposes and therefore may serve as the basis for action by United States patrol vessels against foreign nationals.

The interpretation indicated by the charts was called to the attention of Bill Redmond, who has doubts as to its validity (a copy of Redmond's memorandum is attached). In all likelihood we wiill be asked by the Coast Guard,

the State of Alaska, or others for our interpretations if any foreign vessel, including Canadian, is apprehended or reported within this area of the "territorial sea." We, therefore, request a statement outlining the views and/or policy of the Bureau regarding this apparently questionable area.

(Sgd) Harry L. Rietze

HARRY L. RIETZ

cc: Regional Solicitor
Attachment

RCNAAB: 1m

April 17, 1964

UNITED STATES GOVERNMENT

Memorandum

To: Regional Director, BCF, Juneau

From: Fisheries Management Supervisor, BCF, Juneau

Subject: Delineation of territorial sea base lines, Southeast Alaska

Statistical Liaison Officer Bill Evans informed me that you desired my opinions regarding the subject base lines, with particular reference to the entrance of Cross Sound, as depicted on charts provided this region by the Central Office. The charts were provided by Central Office in 1963 and used to determine the fishery resources which would be effected by the adoption of a straight base line method of determining territorial seas and/or the adoption of a 12 mile territorial sea or fishing zone.

To determine the adequacy of the base line interpretations as shown on our charts, I consulted other charts in the possession of the 17th Coast Guard District. The Coast Guard charts were provided by their Commandant's Office to delineate the three mile territorial sea to be used for enforcement purposes concerning foreign incursions. Accompanying the Coast Guard territorial sea charts was correspondence from the Commandant, which stated the lines delimiting the U.S. territorial seas and the base lines had been determined by Dr. G. Etzel Pearcy, geographer of the Department of State, in accordance with rules of the Convention on the Territorial Sea and Contiguous Zone of 1958. Since these rules are subject to various interpretations by the individual when applied to any particular coast line, minor differences in the precise location of said lines are inherent. These differences can only be

resolved by judicial review. Dr. Pearcy's boundaries, being considered as expert opinion, were determined adequate basis for the purposes of law enforce. .ent upon foreign nationals.

A careful scrutiny of the Coast Guard's territorial sea charts revealed they are copies of the charts which had been provided this region by the Central Office. You will recall that when the charts from Central Office arrived we suspected they were the same charts displayed by State Department representatives during the Resource Management conference in January of 1963. Therefore, the territorial sea base lines appearing on our charts represent the interpretations of a Department of State expert in this field and, in my opinion, should be considered the most authoritative delineation available.

RONALD C. NAAB

April 17, 1964

Regional Director, BCF, Juneau

Fisheries Management Supervisor, BCF, Juneau

Delineation of territorial sea base lines, Southeas Alaska

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RONALD C. NAAB

cc: Bill Evans
RCNAAB:lm
600-02

EXHIBIT 7
Pages 1-4

DEPARTMENT OF STATE
Washington, D.C. 20526

January 16, 1973

MEMORANDUM

To: COA—Amb. McKernan
IO—Mr. Herz
Commerce—Mr. Pollock
Defense—Mr. French
Interior—Mr. Ratiner
Justice—Mr. Rashkow
Transportation (CG)—Capt. Yost

From: L—Charles N. Brower

Subject: Baselines for the Alexander Archipelago

The general background on this issue is contained in the first four and one-half pages of the earlier memorandum of August 30 which I have attached for your information. As you recall, a meeting of the Executive Group was held on September 7 to discuss the problem of the baselines in the Alexander Archipelago area of the Alaska Coast as reflected on the provisional charts prepared by the Baselines Committee. It was agreed at that time that the present maps of the area should be withdrawn. However, it subsequently proved impossible to reach complete agreement on a method for implementing that decision, particularly because of difficulties in resolving questions related to the domestic legal effect of various possible alternative solutions. Consequently, on September 22, Mr. Stevenson requested an official posi-

tion from the Department of Justice on certain legal questions with respect to the domestic legal effect of either an historic claim or the use of straight baselines to enclose the waters of the Alexander Archipelago as internal waters. Copies of that request and the response from Justice are attached.

With regard to the possibility of an historic internal waters claim, the Department of Justice concludes that such a claim would expand the area of submerged lands in which the state has rights under the Submerged Lands Act. Also, the arguments presented in the earlier memorandum concerning an historic claim clearly indicate that there is a substantial question as to whether there is sufficient evidence in this case to establish such a claim. As the Justice Department notes on page 4 of its letter, "the United States must take care to comply with standards of proof employed in international law. To deviate from those standards would risk compromising the disclaimers to alleged historic title, which the United States has already made in connection with other parts of our coasts." The Justice letter does indicate its belief that the espousal of an historic *territorial sea* claim would *not* expand the area of submerged lands under State control. However, such a claim may not be consistent with the Convention on the Territorial Sea and the Contiguous Zone and would be relatively novel in international practice (there are only three instances in which such claims *may* have been made and they are not clear-cut). In any case, an historic territorial sea claim would also be based on questionable evidence and could adversely affect earlier U.S. disclaimers. Consequently, an historic claim of either type would seem inadvisable in this instance.

As to the question of the possible use of straight baselines in the area, we believe that there are basically two viable options.

OPTION 1: Apply a system of straight baselines to the Alexander Archipelago.

As is explained in Mr. Stevenson's August 30 memorandum, the area in question clearly meets the requirements of the Convention on the Territorial Sea and Contiguous Zone (and of the 1951 Norwegian Fisheries Case before the ICJ, of which Article 4 of the Convention is simply a codification). The United States could, therefore, apply straight baselines in the area in a manner fully consistent with the most conservative possible reading of Article 4. Since this use of straight baselines would not go beyond that which all would agree is clearly permissible under the Convention, it is extremely doubtful that it could have the effect of encouraging claims by others going beyond the proper limits of the Convention as we interpret it. States which wish to make such claims either have already done so or are unlikely to be deterred from doing so simply because the United States does not use straight baselines at all, even where clearly justified. More than one-half of the coastal States already use straight baselines, and since our lines would clearly be in accordance with recognized international law, we would remain in an equally strong position to argue against any misuse of straight baselines for purposes not envisioned by the Convention. Also, it is clear that this option presents the simplest solution since it does not involve the elaborate justification required for an historic claim. Although the Justice Department letter indicates some risk of litigation over the issue, it does state Justice's belief that the present application of a system of straight baselines in the Alexander Archipelago would not increase

the area of submerged lands in which the state has rights under the Submerged Lands Act. Finally, the Justice letter clearly takes the position that it is within the discretion of the Executive to draw straight baselines for one or more areas of the United States coast and not for other areas.

OPTION 2: Apply a system of straight baselines to the Alexander Archipelago on the condition that the state waive all claims it might assert to the natural resources of the additional areas of submerged lands beneath territorial seas.

The Justice Department letter indicates some likelihood of litigation with the State of Alaska over the ownership of seabed resources and also notes the same possibility of litigation with other states which feel that straight baselines should be applied to areas of their coasts as well. Consequently, they suggest that a waiver of all seabed mineral resource claims in the area affected by a change to straight baselines be obtained from the State of Alaska before such a system is applied. Such a waiver would apply to all areas of submerged lands beneath areas of territorial sea added due to the drawing of straight baselines and would eliminate any possibility of litigation with Alaska concerning ownership of such submerged lands. Since other states desiring straight baselines would presumably want them for the purpose of expanding their area of submerged lands, the use of the waiver would also deter them from seeking similar application of straight baselines. If accepted by Alaska, this procedure would, of course, remove the possibility of financial loss to the Federal Government from possible adverse court action on the issue.

The major disadvantage to this option is that it could require lengthy negotiations with the State of Alaska to

arrive at an agreement on a waiver provision. Also, it is possible that other states such as Louisiana would hear of the possible use of straight baselines and begin to argue their own case anew, thus complicating the negotiation of a waiver with Alaska.

We expect to discuss this subject at the Executive Group meeting on January 17. We hope to reach final agreement on this issue and that agency representatives will attend with the authority to approve such a decision.

Attachments

EXHIBIT 8
Pages 1-13

DEPARTMENT OF STATE
Washington, D.C., 20520

LIMITED OFFICIAL USE

August 30, 1972

MEMORANDUM

To: S/FW-COA—Ambassador McKernan
IO—Mr. Herz
INR—Mr. Hodgson
Interior—Mr. Ratiner
Commerce—Mr. Pollock
Defense—Mr. French
Justice—Mr. Rashkow
DOT/Coast Guard—Captain Hallberg

From: L—John R. Stevenson
/s/ JRS

Subject: *Baselines for the Alexander Archipelago: Background for September 1 Meeting*

Introduction

This memorandum provides background for consideration of a problem which has arisen in connection with the delimitation of the territorial sea and the contiguous zone in Southeastern Alaska, as shown on charts prepared by an interagency committee established under the Law of the Sea Task Force. The charts use the arcs-of-circles method to depict the territorial sea and contiguous zone in the Alexander Archipelago, a group of large islands

separated from each other and the mainland by narrow straits. Alaskans have reacted strongly to this approach, which they believe is inconsistent with what they consider the traditional treatment of the waters of the Archipelago as internal waters, and have urged that the federal government either use straight baselines to enclose the area as internal waters or assert an historic claim to that effect. They have submitted limited, but material, evidence in support of their view of the historic treatment of these waters. This memorandum sets forth the evidence, the policy considerations, and the action we propose to resolve this problem. I have scheduled a meeting for Friday, September 1, at 2:30 p.m. to consider the matter.

I. BACKGROUND

The Committee on the Delimitation of the United States Coastline was formally established by a memorandum dated August 7, 1970 from the Acting Legal Adviser of the Department of State to the Executive Operations Group of the Law of the Sea Task Force. The Committee was established under the Task Force and consists of members from the Departments of State, Commerce, Justice, Interior and Transportation.

Guidelines for the Committee's operations were set out in an attachment to the August 7 memorandum (Tab A). The purpose of the Committee was to delimit, provisionally, baselines, the territorial sea and the contiguous zone for the entire coastline of the United States. The memorandum establishing the Committee indicated that the charts would contain sufficient caveats to indicate that they were not a final and definitive U.S. position. It further stated that

> It is not intended that the charts resulting from the Committee's work will be circulated throughout the

Government even as a provisional U.S. position, but rather will be available for use when current and pressing problems arise.

The original task was completed in late 1970 and, after approval by the members of the LOS Task Force, and notwithstanding the original intent, a full set of the charts was published in April 1971 and has been circulated throughout the Government and made available to private individuals and foreign governments.

On August 31, 1971, Governor William A. Egan of Alaska wrote to President Nixon to protest the publication of the maps, which the Governor claimed did not accurately represent the maritime boundaries of the State of Alaska. Governor Egan argued that the straight baseline method of delimitation should be used in Alaska or, alternatively, that historic claims should cover all of the water areas inside the Alexander Archipelago. He requested that the maps be withdrawn pending the changes requested.

Under Secretary Irwin responded to Governor Egan in December, indicating the purpose of the maps and noting that the drawing of the boundaries involved considerations fundamental to U.S. law-of-the-sea policy. He pointed out that the United States had national security reasons related to its law-of-the-sea objectives for avoiding the use of straight baselines and noted that this had been a consistent U.S. policy. Mr. Irwin indicated that each map bore the caveat that the lines are provisional and subject to change through amplification or revision of the underlying data or a reinterpretation of the legal principles involved. He also explained the U.S. position relating to historic bays and indicated that we would be pleased to consider any information on that or the other issues that the Governor might wish to present.

In October 1971, Senator Ted Stevens of Alaska spoke to the Secretary concerning this problem and began what has developed into a continuing correspondence with Mr. Abshire and Mr. Stevenson on the issue. On May 15, 1972, at the request of Senator Stevens, the Senate Commerce Committee held hearings in Juneau, Alaska on the question of the boundaries in the Alexander Archipelago. Because of his strong interest in the question, we have indicated to him that we would re-examine the charts in light of the other considerations involved in delimiting the boundaries in that area as soon as possible. Senator Stevens met with the Secretary on August 17 to urge that action be taken soon. The Secretary indicated that the problem would be addressed by the Task Force as soon as possible after the end of the Seabed Committee session in Geneva.

II. AVAILABLE INFORMATION

The State of Alaska has submitted to the Department and to the Senate Commerce Committee affidavits of five individuals relating to the historic practice regarding foreign fishing, particularly in the waters within and off the coast of the Alexander Archipelago. These individuals were employed by the Alaska Branch of the U.S. Fish and Wildlife Service during various periods from 1930 to 1961 as administrators at several levels and in one case as a patrol boat captain. All the affidavits indicate that it was the understanding of the fisheries enforcement authorities in Alaska at all times covered by the affidavits that the waters of Alaska in the Alexander Archipelago included all waters within and three miles seaward of lines drawn from headland to headland across all bays, inlets, passes, straits, sounds and entrances. With two exceptions, the affiants indicated that they were unaware of any foreign fishing within these waters during the periods covered

by their affidavits and that such fishing would have been regarded as illegal. (One affidavit stated specifically that such fishing would have violated the 1906 Alien Fishing Act (48 U.S.C. § 243), which prohibits foreign fishing within the "waters of Alaska under the jurisdiction of the United States", with certain provisos). One of the two individuals who recalled any foreign fishing in these waters stated that the only such incidents of which he was aware had resulted in arrest and, in some cases, in the seizure of vessels and gear. The other indicated that, in the only incident of foreign fishing he recalled, a Canadian boat arrested for fishing in the waters of the Archipelago near the international boundary between the United States and Canada was released pursuant to a general policy of leniency in such cases.

The State of Alaska has also submitted a letter from the International Pacific Halibut Commission indicating the absence of any Canadian halibut fishing in the waters of the Alexander Archipelago during the years 1929 to 1970 (apart from one report in Chatham Strait in 1934) except in two statistical sectors which contain halibut grounds which are well off shore. The Commission has not indicated whether all reported fishing in these latter two sectors was in fact offshore, and such information could probably be developed only through a detailed analysis of the Commission's records.

The waters of the Alexander Archipelago do not, according to the charts published by the Task Force Committee, include any areas which are not either territorial sea or contiguous zone. There are, however, substantial areas of contiguous zone extending well into some of the larger straits. Until 1966, when the Contiguous Zone Fisheries Act was passed, foreign fishing would not have been prohibited in these areas had the Committee charts been used as the basis for enforcement.

From about 1964 until the date of issuance of the Committee charts, the Coast Guard used charts which were apparently derived from some hypothetical lines developed by the former Geographer of the Department of State, Mr. Etzel Pearcy. These charts, which were widely known in Alaska, show closing lines drawn from headland to headland across all bays, straits, etc. and the territorial sea limit three miles to seaward of those lines. While it is not clear exactly how these charts came into general use, they do appear to approximate the limits of Alaskan waters as previously understood by Alaskan fisheries enforcement authorities according to the affidavits.

III. SUBSTANTIVE OPTIONS

There are essentially three substantive options open to us concerning the treatment of the Alexander Archipelago:

(1) adhere to the lines shown on the present charts;

(2) assert an historic claim; or

(3) adopt straight baselines.

Option A—Adhere to the Present Charts

The Task Force Committee charts were developed on the basis of a strict application of the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone. They do not show closing lines across any straits, channels, or passages, but determine the status of the waters between the islands of the Alexander Archipelago in accordance with the arcs-of-circles method. The effect of this treatment is that the waters of the Archipelago are for the most part territorial sea but contain substantial tongues and pockets of contiguous zone. The seaward limits of the territorial sea and continguous zone are not much different from what they would be if closing

lines were drawn across the entrances to all straits, channels and passages.

The advantage of adhering to the present system is that it does not involve adoption of either straight baselines or historic claims and thus cannot possibly involve any prejudice to positions we might wish to take in the future with respect to the use of these techniques by others.

The disadvantage is that we would be seen as sacrificing what Alaskans regard as their legitimate interests—though the concerns are much more emotional than practical—to gain obscure and uncertain negotiating advantages internationally. There is no dispute that the Alexander Archipelago clearly qualifies for use of the straight baselines system approved by the International Court of Justice in the Norwegian Fisheries Case and recognized in Article 4 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. In addition, the Alaskans perceive, rightly or wrongly, that the approach used in the Committee charts amounts to an abandonment of an historically-established practice, if not an internationally-recognized historic claim, with respect to the waters in the Archipelago.

Option B—Assert An Historic Claim

New charts could be issued showing closing lines across the entrances to all straits, etc., in the Alexander Archipelago, thus enclosing all the waters of the Archipelago as internal waters, and the use of such lines could be justified on grounds of historic practice. The international law criteria for such a claim are as follows:

(1) There must have been open, notorious and effective exercise of authority over the waters in question;

(2) The exercise must have been continuous; and

(3) The exercise must have had the acquiescence of foreign nations.

One problem associated with any historic claim in this area is that there has never been a formal communication by the United States Government to other governments of any such claim. It is possible that other governments may have obtained copies of the Coast Guard (Pearcy) maps or other maps indicating that the waters of the Alexander Archipelago were internal waters, but we have no evidence that they had such notice. In 1957-1958, we opposed a Soviet claim of historic title to Peter the Great Bay, which, the Soviet Government asserted, had for years been included as internal waters under its fisheries regulations, on the ground that

> internal regulations of the Russian Government, which were not communicated to the Governments of other States, . . . could [not] be sufficient to establish the degree of acceptance on the part of the rest of the world that would be necessary to justify [an historic claim].
>
> (4 Whiteman, *Digest of International Law* 256-257.)

On the other hand, there is authority for the proposition that certain kinds of acts are sufficient to communicate a claim of sovereignty, including in particular the exclusion of foreign vessels from the area in question. (See, *e.g.*, sources cited in Post-trial brief of the United States in *U.S.* v. *Alaska*, D. Alaska, Civil No. A-45-67, at 40-41.) Moreover, it would not necessarily have to be shown that enforcement activities had been carried out to achieve this end, since the exclusion might have been respected without the need for actual enforcement. What must be shown is that to the extent that action on the part of the State

and its organs was necessary to maintain its authority over the area, such action was undertaken. (*Id.* at 45). In any case, however, there must be some basis for the conclusion that the reason foreign vessels did not enter the waters in question was an understanding or belief that the coastal state claimed jurisdiction.

An historic claim would be limited in any case to the type of authority actually exercised, so that, for example, a State could not claim as internal waters areas in which it had permitted innocent passage as in territorial seas. (*Id.* at 41-42). We understand informally from Coast Guard officers familiar with practice in Alaska that no right of innocent passage has generally been accorded in the Alexander Archipelago. Moreover, vessels entering the waters of the Archipelago *en route* to U.S. ports apparently have been required to give notice before entering those waters. There is apparently an exception in the "Insude Passage" along the Alaskan and Canadian coasts, where U.S. and Canadian vessels (only) transit freely.

A further theoretical question which arises in connection with a possible historic claim to the waters of the Alexander Archipelago is that they cannot really be considered to be an historic "bay", since the waters are not geographically a bay, and are thus not strictly within the exception for historic bays under Article 7, paragraph 6 of the Territorial Sea Convention. However, the problem we face in this respect is analogous to that of Long Island Sound, which we treat as historic waters in spite of the fact that it is a sound rather than a true bay.

The historical situation in the Alexander Archipelago seems to differ in some respects from that in Cook Inlet, the historic status of which is presently under litigation between the State and the Federal Government. We therefore believe it would be possible to assert an historic claim in the Archipelago without in any way undercutting our

position that no such claim exists in Cook Inlet. While the evidence submitted by the State is one-sided and subject to a certain amount of skepticism, the following differences appear from the evidence available with respect to the two situations:

—In the case of Cook Inlet, there was evidence that enforcement authorities, including some of those who have submitted affidavits relating to the Alexander Archipelago, did not consider foreign fishermen to be in violation of U.S. law if they were fishing more than 3 miles from shore in Cook Inlet. By contrast, the affidavits indicate that enforcement authorities considered that foreign fishing in any of the waters of the Alexander Archipelago would have been a *per se* violation of U.S. law because such waters were considered to be under the jurisdiction of the United States. (This is relevant only insofar as it bears on the action enforcement authorities might have taken or been expected to take with respect to warning foreign vessels away from areas regarded as internal waters and enforcing U.S. laws within these waters had foreign vessels entered).

—In the Cook Inlet case, there was clear evidence that foreign fishing had in fact taken place without interference in the areas which the State sought to claim as historic waters. The present evidence with respect to the Alexander Archipelago is to the contrary, although we would not be in a position to evaluate this evidence without full investigation through other sources.

—The evidence in the Cook Inlet case indicated that there had not been enforcement activities against foreign nationals fishing in the contested area in Cook Inlet. By contrast, the present evidence with respect to the Alexander Archipelago, though meager, indicates that there were arrests in all cases of foreign fishing and that penal-

ties were imposed in some cases. The evidence is inconclusive on this point, however, since much of the area in the Alexander Archipelago consists of territorial seas even according to the Task Force Committee charts, and foreign fishing thus would have been prohibited in these areas in any case.

The advantage of using an historic approach is that it would permit us to satisfy the Alaskan concerns regarding the Archipelago without the appearance of a policy shift which would necessarily accompany the adoption of straight baselines. It would also probably make it easier to resist pressure to make claims going beyond the simple closing-line approach which the Alaskans believe is historically justified, since a system of straight baselines *could* encompass a larger area without being unreasonable.

The disadvantage of an historic approach is that it might involve some fairly difficult problems of proof vis-a-vis other governments, since our records may be less than conclusive. Moreover, to the extent that we were unable thoroughly to document our claim, our ability to contest historic claims of others would be somewhat reduced.

Option C—Use Straight Baselines

The Convention on the Territorial Sea and the Contiguous Zone provides in Article 4 that the method of straight baselines may be used in situations in which there is a fringe of islands along the coast in its immediate vicinity and in which the sea areas within the lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. Article 4 also states that account may be taken of economic interests peculiar to the regions concerned, the reality and the importance of which are clearly evidenced by long usage. There is a

requirement that the drawing of such baselines must not depart to any appreciable extent from the general direction of the coast.

The Alexander Archipelago clearly meets the requirements of the Convention (and of the 1951 Norwegian Fisheries Case before the ICJ, of which Article 4 of the Convention is simply a codification) and thus the United States could, consistent with the Convention, utilize straight baselines in that area. The archipelago consists of many islands which are close to the mainland and which are separated in most cases by relatively small bodies of water.

The advantage of the straight baseline option is that it is the simplest and neatest solution. It would avoid any difficulties we might have in proving the existence of an historic claim, and would be clearly justified under existing rules of international law.

One disadvantage is that we might find it more difficult to resist pressure to draw straight baselines in other areas of the Alaska coast and off the coasts of other States such as Maine, Georgia and Louisiana (a key issue in some of these latter areas is that of state vs. federal jurisdiction over seabed mineral resources). We could, however, justify limiting use of straight baselines to this specific situation on the grounds that the lines would reflect economic interests which are evidenced by long usage.

There is also some concern that use of straight baselines might encourage others to apply the concept in a manner inimical to our interests, *e.g.*, by enclosing coastal islands or mid-ocean archipelagoes. On the other hand, given the fact that more than half of the coastal states of the world already utilize straight baselines, it is doubt-

ful that our action would have much effect on the actions of other States in this regard. Moreover, we would certainly be in a good position to distinguish between use of straight baselines in the Alexander Archipelago, which clearly falls within the straight baselines rules of the Norwegian Fisheries Case and the Territorial Sea Convention, and misuse of baselines for purposes not envisioned in the case or the Convention. In short, it is doubtful that our use of straight baselines in the Alexander Archipelago would in any sense be a precedent for broader uses of straight baselines, since it is difficult to think of an area that more clearly qualifies for such treatment under existing rules.

IV. TIMING

In some respects this is a bad time to make any change in the Alaska charts. To the extent that whatever position we take may be considered to weaken our position *vis-a-vis* various claims by other states, it is arguable that any change should await successful completion of the Law of the Sea Conference, which will probably resolve the practical problems in Alaska in any event. Moreover, it seems clear that additional historical research would give us a better understanding of the strength of any claim we might make on historical grounds.

On the other hand, delay has some significant disadvantages. The Alaskans feel strongly that their position with respect to the Alexander Archipelago is rapidly eroding as a result of the issuance of the charts, and that their grievance is exacerbated by the fact that they were not consulted, informed, or given an opportunity to present their views before the charts were issued. The evidence they have submitted, though not a complete historical record in any sense, is sufficiently weighty to cast

doubt on the appropriateness of the lines shown on the present charts. Continued adherence to those lines as the official U.S. position, when we have indicated a willingness to adjust the charts to reflect any valid historic claim, may therefore possess a sufficient appearance of bureaucratic intransigence to create serious congressional difficulties concerning use of the charts in other areas. This is an important election-year issue in Alaska, and Senator Stevens has told us he is under pressure from Senator Magnuson to proceed with further hearings on a broader range of questions concerning issuance of the charts.

Finally, delay in changing the charts can also make it more likely that foreign governments would resist any eventual change. Revision of the charts now can easily be explained as a correction of a mistake. The longer we wait, the more it will be regarded as a change of policy.

V. PROPOSED ACTION

In light of the fact that the Alexander Archipelago so clearly qualifies for the use of straight baselines, we believe such a system should be adopted and the lines drawn in a manner which generally encloses the straits and other waters of the Archipelago. Specifically, the lines should follow the coastlines of the seaward islands but be drawn across the entrances to all straits, channels, etc., running between islands.

We do not believe the use of such a system will have a negative impact on our Law-of-the-Sea negotiating position, nor do we believe a continued refusal to use such a system is justifiable in light of the fact that it is so clearly appropriate to this situation.

While assertion of an historic claim may also be possible, we believe such a course would raise some uncer-

tainties, and possible difficulties with other governments, which can be avoided through the use of straight baselines. At the same time, the fact that such baselines, though clearly permissible in any case, would also reflect economic interests evidenced by long usage, will give us a sound basis for resisting use of straight baselines in other areas of the U.S. coast or by other governments in dissimilar situations.

It would be our intention to issue new, revised charts showing straight baselines as soon as possible and, in the interim, to make a public announcement to the effect that the old charts for the Alexander Archipelago were being withdrawn and that the straits and channels of the Archipelago should be regarded as internal waters.

EXHIBIT 9
Pages 1-3

UNITED STATES
DEPARTMENT OF AGRICULTURE
Office of the Solicitor
Washington 25, D.C.

June 28, 1950

Mr. C. C. Carlson
Office of the Solicitor, U.S.D.A.
901 United States National Bank Building
Portland 4, Oregon

Dear Mr. Carlson:

This is in response to your request for an opinion with respect to the status of reclaimed tidelands within the exterior boundaries of the Tongass National Forest, Alaska.

The lands consists of tidal flats on the east shore of Excursion Inlet which were filled up and used by the Army during the last war. The fill is contiguous to national forest lands and to adjoining tracts in private ownership. The military use has been terminated, and inquiry has been made as to whether this Department has authority to issue permits for private uses of some or all of the reclaimed shore lands.

We agree with your tentative opinion that the lands do not have national forest status, and that this Department has no jurisdiction over them. Our conclusion is explained below.

Excursion Inlet is a long arm of the sea, cutting far into the approximate center of an area which was included within the boundaries of the Tongass by the following

provisions of the proclamation of June 10, 1925 (44 Stat. 2578):

> "I, . . . President of the United states, . . . by virtue of the authority in me vested by the act of . . . March 3, 1891 . . ., and also by the act of . . . June 4, 1897 . . ., do proclaim that the boundaries of the Tongass National Forest are hereby changed to include the areas indicated on the diagram hereto annexed, and forming a part hereof . . . "

The diagrams annexed to the proclamation indicates, as an addition to the forest, an area comprising Excursion Inlet and extensive uplands on both sides. However, the proclamation should be regarded as inoperative with respect to tidelands, since the forest boundaries were enlarged under the authority of laws which relate to the establishment of forest reservations on "public lands" (16 U.S.C. 471, 475), and tidelands in a Territory are not "public lands" of the United States,[1] but are held in trust for the benefit of the State which may be formed in the Territory. Therefore, the proclamation should be construed as making an implied exception of tidelands, in compliance with the statutory limitation upon the establishment of forest reservations, and in conformity with settled principles of policy and law with respect to the status of such lands.[2]

National forest lands on the east side of Excursion Inlet were included [in] a military reservation, under a Public Land Order issued in 1943 which applied to public lands "above the ordinary high tide" (P.L.O. 177; CFR 1946 Supp. 6338). The order provided that military jurisdiction should cease at the end of a stated period

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1 *Mann v. Tacoma Land Co.*, 153 U.S. 273 (1894); *Dent v. Alaska Placer Co.*, 177 F. (2d) 10, 17 (1935).

2 *Shively v. Bowlby*, 152 U.S. 1 (1894); *Carrol v. Price*, 81 Fed. 173 (D.C., Alaska, 1896).

following the expiration of the national emergency then existing, and that jurisdiction should then be vested in other Federal agencies, according to their interests of record. The order was revoked in 1949, and jurisdiction over the national forest lands was revested in this Department (P.L.O. 566; 14 Fed. Reg. 1007).

While the military reservation was in effect, the Army used national forest land within its boundaries for military purposes. The Army also filled up tidal flats in front the western (high tide) boundary of the reservation, and used them in conjunction with the lands inside of the boundary. The reclamation and use of shore land was plainly incidental to the military purposes for which the temporary reservation had been established. However, the authority to use the tideland was not derived from Public Land Order 171, or from any statute or land order making specific reference to such lands in Alaska or elsewhere.

It is clear that the tideland was reclaimed for the purpose of enabling the Army to use the area as a seaport during the war. The facts indicate that the reclamation was a military engineering project for temporary use, and that it was not undertaken with a view to severing part of the shore of Excursion Inlet from the great body of tidelands which the United States held in trust for the future State. In the circumstances, there is no occasion to consider whether a severance would have been effected if the flats had been filled with a view to permanent military use (with or without specific authorization by Congress), under an extension of the doctrine that the United States has power to dispose of tidelands within a Territory whenever necessary to carry out public purposes appropriate to the objects for which the United

States holds the Territory,[3] since it appears that the United States did not intend or purport to relinquish its fiduciary title to the land here involved, when it acted through its Army Engineers to raise that land above tide level for temporary use. In this connection, it has been held that the disposition of lands under navigable waters in a Territory is not to be inferred unless the intention to do so was made plain.[4]

It has been held that the doctrine of accretion does not apply to land reclaimed by artificial means from the bed or shore of navigable water,[5] and that the owner of tidelands does not lose his title to the owner of adjacent upland when the tidal flats are reclaimed.[6] It has also been held that where the United States reclaimed submerged land which it owned as proprietor of the bed and shores of the Potomac River opposite the District of Columbia, the filled land remained property of the United States and that title did not inure to the owner of adjacent upland.[7]

The same principles, applied to the present case, lead to the conclusion that:

> (1) Title to the tidal flats did not pass to the owners of adjacent private lands when the United States filled up the flats; (2) title to the flats did not shift from the United States as fiduciary, to the United States as absolute proprietor, when the shore level

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[3] *Shively v. Bowlby*, 152 U.S. 1 (1894); *Brewer-Elliott Oil and Gas Co., United States*, 260 U.S. 77 (1922); *Moore v. United States*, 157 P. (2d) (C.C.A. 9, 1946); Cf. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 103 (1949).

[4] *United States v. Holt State Bank*, 270 U.S. 49 (1926).

[5] *United States v. Mission Rock Co.*, 189 U.S. 391 (1903).

[6] *Shively v. Bowlby*, 152 U.S. 1 (1894).

[7] *Marine Rwy. Co. v. United States*, 257 U.S. 47 (1921).

> was raised by Army Engineers for temporary use in furtherance of the war effort; and (3) the flats retain the status of tidelands over which this Department has no jurisdiction.

Sincerely yours,

/s/ E. F. Hynatt
Associate Solicitor

EXHIBIT 10
Pages 1-7

EXECUTIVE ORDER

ALASKA

Reference No. 342C
Executive Order No. 4257
Date Signed: 6/27/25

It is hereby ordered that 53 parcels of land and islands situated in Alaska represented upon 45 U. S. Coast and Geodetic Survey charts and made a part of this order described as follows be and the same are hereby reserved for lighthouse purposes subject to any existing valid rights thereto. viz:

1. ALTHORP ROCK, Port Althorp, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8304—Sheet No. 1.

   A small rock about 15 feet high, near middle of Port Althorp.

   (Approx. Long. 136° 21½' W. Lat. 58° 10' N.)

2. AMELIUS ISLAND, Sumner Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8200—Sheet No. 2.

   Small island about 400 yards in diameter 1¾ nautical miles 147° true from Point Amelius.

   (Approx. Long. 133° 52' W. Lat. 56° 10½' N.)

3. BELLKOOFSKI, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8703—Sheet No. 3.

   Southern part of point located 1¼ nautical miles southwesterly from the village of Belkofski; all of that part of the point which lies on the south side of a true east and west line drawn across the point at a distance of 600 feet north true from high water line at the southernmost part of the point.

   (Approx. Long. 162° 03½' W. Lat. 55° 04½' N.)

4. BLOCK ISLAND, Tlevak Narrows, Alaska, shown on U. S. Coast and Geodetic Chart No. 8151—Sheet No. 4.

   Island at Tlevak Narrows, between Prince of Wales Island and Dall Island.

   (Approx. Long. 133° 07' W. Lat. 55° 16' N.)

5. BLUFF ISLAND, Clarence Strait, Alaska, shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 5.

   Island about ¾ mile long, one of easterly islands of Kashevarof group.

   (Approx. Long. 132° 53' W. Lat. 56° 10' N.)

6. CAAMANO POINT, Cleveland Peninsula, Clarence Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6.

   All that part of the extreme south end of Cleveland Peninsula lying on the south side of a true east and west line drawn across the point at a distance of 800 feet north true from the southernmost point of the low water line; including offlying rocks and islets not covered at low water.

   (Approx. Long. 131° 59' W. Lat. 55° 30' N.)

7. CHIGNIK SPIT, Anchorage Bay, Alaska Peninsula, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8822—Sheet No. 7.

Outer part of spit located on east side of Anchorage Bay, about 1 nautical mile northeasterly from the head of the bay, all that part of the spit lying on west side of a true north and south line drawn across the same at a distance of 760 feet east true from the most westerly part of the high water line at the point.

(Approx. Long 158° 23' W. Lat. 56° 17½' N.)

8. CLIFF POINT, Portland Canal, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8051 —Sheet No. 8.

Beginning at a point on low water line, west shore of Portland Canal, 1520 feet in a direct line, southerly, from the center of the concrete slab forming the foundation of Cliff Point Light, thence, west true 1520 feet, thence north, true, 3040 feet, thence east true 760 feet, more or less, to an intersection with the low water line, thence southeasterly and southerly, following the windings of low water line to point of beginning.

(Approx Long. 130° 07½' W. Lat. 55° 41' N.)

9. EAST POINT, Kupreanof Island, entrance to Portage Bay, shown on U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 9.

All of that part of the point lying on the west side of a true north and south line drawn across the point at a distance of 600 feet east true from the most westerly part of the low water line at the point.

(Approx. Long. 133° 19' W. Lat. 57° 00' N.)

10. EVANS BAY, Evans Island, Prince William Sound, Alaska, shown on U.S. Coast and Geodetic Survey Chart No. 8523—Sheet No. 10.

Northern part of peninsula on east side of southern part of Evans Bay; all that part of the peninsula lying north of a true east and west line drawn across the same at a distance of 600 feet south true from the most northerly part of the low water line; including offlying rocks not covered at low water.

(Approx. Long. 148° 02½' W. Lat. 60° 03' N.)

11. FALSE POINT PYBUS, Admiralty Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8224, sheet No. 11.

Beginning at a point 1285 feet northwest true from the center of False Point Beacon, a slatted tripod located on the point about one nautical mile southerly from False Point Pybus, thence east true 1170 feet, more or less, to an intersection with the low water line, thence southerly and westerly, following the windings and indentations of the low water line to a point from which point of beginning bears north true, thence north true, 1000 feet, more or less, to point of beginning.

(Approx. Long. 133° 52½' W. Lat. 57° 21' N.)

12. FALSE POINT RETREAT, Lynn Canal, Admiralty Island, shown on U.S. Coast and Geodetic Survey Chart No. 8302—Sheet No. 12.

Beginning at a point near the west shore of Mansfield Peninsula about 2½ nautical miles southerly from Pt. Retreat, from which the center of False Point Retreat Beacon, a slatted tripod anchored to concrete piers, bears west true, distant 900 feet, thence southwest true 900 feet, more or less, to and intersection with the low water line thence northwesterly, northerly and northeasterly, following the windings of the low water line, to a point from which point of beginning bears southeast true, thence southeast true 600 feet, more or less, to point of beginning.

(Approx. Long. 134° 58' W. Lat. 58° 22' N.)

13. FANNIE ISLAND, Port Snettisham, Alaska, shown on U.S. Coast and Geodetic Survey Chart No. 8227—Sheet No. 13.

Island off Prospect Point, about ¼ nautical mile long by about 150 yards wide.

(Approx. Long. 133° 47' W. Lat. 58° 02½' N.)

14. GOAT ISLAND, Tlevak Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8151—Sheet No. 14.

All that part of the southeastern extremity of Goat Island lying south of a true east and west line drawn across the point at a distance of 1200 feet north of the southernmost extremity of the island.

(Approx. Long. 132° 53' W. Lat. 55° 10' N.)

15. GRAND ISLAND, Stephens Passage, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8300—Sheet No. 15.

Beginning at a point on low water line, east shore of Grand Island, 1520 feet in a direct line, southerly, from the center of Grand Island Beacon, a slatted tripod anchored to concrete piers, thence west true 1520 feet, thence north true 1824 feet more or less, to an intersection with low water line, thence southeasterly and southerly, following the windings of the low water line to point of beginning.

(Approx. Long. 134° 06' W. Lat. 58° 06' N.)

16. GRANTLEY HARBOR, Port Clarence, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 9385—Sheet No. 16.

All that part of the sand spit on north side of the entrance to Grantley Harbor, which lies on the south side of a true east and west line drawn across the spit at a distance of 3040 feet north true from the most southerly part of the low water line at the end of the spit.

(Approx. Long. 166° 20' W. Lat. 65° 17' N.)

17. GUIDE ISLAND, Tlevak Strait, Alaska, shown on U. S. Coast and Geodetic Survey No. 8151—Sheet No. 4 (same as for Block Island)

Island in northerly part of Tlevak Strait, between Prince of Wales Island and Dall Island.

(Approx. Long. 133° 04' W. Lat. 55° 13' N.)

18. HALIBUT COVE, Kachemak Bay, Cook Inlet, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8554—Sheet No. 17.

All of Ismailof Island.

(Approx. Long. 151° 14' W. Lat. 59° 35½' N.)

19. HIGH POINT, Woronkofski Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160 —sheet No. 18.

Beginning at a point on low water line at the head of the first bight easterly of the point and about ⅛ nautical mile distant therefrom, thence south true 1520 feet, thence west true 1100 feet, more or less to an intersection with the low waterline, thence northerly and easterly, following the windings of the low water line to point of beginning.

(Approx. Long. 132° 33' W. Lat. 56° 24' N.)

20. KABUCH POINT, Alaska Peninsula, east side of south end of Isanotski Strait, shown on U. S. Coast and Geodetic Survey Chart No. 8822—Sheet No. 19.

All that part of the point lying on the southwest side of a true southeast and northwest line drawn across the point at a distance of 760 feet northeast true from the center of the concrete slab upon which Kabuch Point Light is constructed; including adjacent rock and reefs not covered at low water.

Approx. Long. 163° 21' W. Lat. 54° 49' N.)

21. KAKUL NARROWS, Peril Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8282 —Sheet No. 20.

Two islets about 150 yards and 100 yards long, respectively, on east side of Kakul Narrows, and all of offlying group of rocks to northward named on the Chart Channel Islets, including all adjacent rocks and reefs not covered at low water.

(Approx. Long. 135° 41' W. Lat. 57° 22' N.)

22. KASAAN BAY, Clarence Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8084— Sheet No. 21.

Unnamed island about 840 yards long by 340 yards wide located near the head of Kasaan Bay 1⅜ nautical miles 66° true from Mound Point.

(Approx. Long. 132° 31¼' W. Lat. 55° 35' N.)

23. LOW POINT, Zarembo Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160 —Sheet No. 22.

Beginning at a point on low water line 760 feet distant in a direct line, easterly, from the center of Low Point Beacon, located on point of shoreline about one mile easterly from Low Point, thence S. 35° W true 760 feet, thence N. 800 W. 760 feet, more or less, to an intersection with the low water line, thence northeasterly and easterly following the windings of the low water line, to point of beginning.

(Approx. Long. 132° 55½' W. Lat. 56° 27½' N.)

24. KIKTAK ISLAND, Gulf of Alaska, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8513 —sheet No. 23.

Island about one mile off Point Martin, west side of Katalla Bay.

(Approx. Long. 144° 36½' W. Lat. 60° 10' N.)

25. MCFARLAND ISLAND, Tlevak Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8148—Sheet No. 24.

Southern part of one of westerly islands of the group about 2 nautical miles long; all that part of the

island lying south of a true east and west line drawn across the island at a distance of 3040 feet north true from the southernmost part of the high water line at the south end of island; including small islet near southeast side.

(Approx. Long. 132° 55' W. Lat. 55° 03' N.)

26. McNAMARA POINT, Zarembo Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 25.

Beginning at a point on low water line 1520 feet in a direct line northerly from McNamara Point Beacon, a slatted tripod structure, thence east true 1520 feet, thence south true 2500 feet, more or less, to an intersection with the low water line, thence northwesterly and northerly following the windings of the low water line to point of beginning.

Approx. Long 133° 04' W. Lat. 56° 20' N.)

27. MEYERS CHUCK, Clarence Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8124—Sheet No. 26.

Small island about 150 yards diameter located about 200 yards northwest of Meyers Island.

(Approx. Long 132° 16' W. Lat. 55° 44½' N.)

28. MOUNTAIN POINT, Wrangell Narrows, Alaska, shown on U. S. Coast and Geodetic Survey chart No. 8170—sheet No. 27.

Beginning at a point on low water line southerly from the center of Mountain Point Beacon and distant therefrom 1520 feet in a direct line, thence west true 1520 feet, thence north true 3480 feet, more or less, to an intersection with the low water line,

thence southeasterly and southerly following the windings of low water line, to point of beginning.

(Approx. Long. 132° 57½' W. Lat. 56° 44' N.)

29. NIBLACK POINT, Cleveland Peninsula, Clarence Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6 (Same as for Caamano Point)

Beginning at a point on low water line from which Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly, distant 1520 feet in a direct line, thence northeast true 1520 feet thence southeast true 3040 feet, thence southwest true 600 feet, more or less, to an intersection with low water line, thence northwesterly following the windings of the low water line, to point of beginning.

(Approx. Long. 132° 07' W. Lat. 55° 33' N.)

30. PEEP ROCK, Karheen passage, Alaska shown on U. S. Coast and Geodetic Survey Chart No. 8171—Sheet No. 28.

Small islet located ¾ nautical mile 306° true from the cannery wharf at Karheen.

(Approx. Long 133° 20' W. Lat. 55° 49' N.)

31. POINT ST. MARY, Lynn Canal, north side of entrance to Berners Bay, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8302—Sheet No. 29.

All that part of the point lying south of a true east and west line drawn across the same at a distance of 3040 feet north true from the high water line

at the southernmost part of the point; including offlying rocks not covered at low water.

(Approx. Long. 135° 01' W. Lat. 58° 44' N.)

32. POINT STYLEMAN, Stephens Passage, north side of entrance to Port Snettisham, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8227 —Sheet No. 30.

All that part of the point lying south of a true east and west line drawn across the point at a distance of 700 feet north true from the southernmost part of high water line; including adjacent rocks and reefs not covered at low water.

(Approx. Long. 133° 53½' W. Lat. 57° 58½' N.)

33. POVOROTNI ISLAND, Peril Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8282 —Sheet No. 31.

Island about 200 yards long, off Pogibshi Point, including adjacent rocks and reefs not covered at low water.

(Approx. Long. 135° 33' W. Lat. 57° 30½' N.)

34. PROKODA ISLET, Narrow Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8570 —Sheet No. 32.

Islet in western part of Narrow Strait between Kodiak and Spruce Islands, including rock awash at high tide close to west side of islet.

(Approx. Long. 152° 30½' W. Lat. 57° 54½' N.)

35. PUFFIN ISLAND, Chiniak Bay, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8570—Sheet No. 33.

Island about 2 nautical miles 206° true from the town of Kodiak; including adjacent rocks and reefs not covered at low water.

(Approx. Long 152° 26½' W. Lat. 57° 45' N.)

36. RANGE ISLAND, Popof Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8700—Sheet No. 34.

Island near east side of northern part of Popof Strait.

(Approx. Long. 160° 30½' W. Lat. 55° 21½' N.)

37. REEF ISLAND, Portland Canal, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8051 —Sheet No. 35.

Island about 150 yards wide and about 550 yards long near west shore in southern part of Portland Canal.

(Approx. Long. 130° 12' W. Lat. 55° 05' N.)

38. ROUND ISLAND, Cordova Bay, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8145 —Sheet No. 36.

Southwestern island of the group about 700 yards long, including offlying rocks and reefs not covered at low water.

(Approx. Long. 132° 30½' W. Lat. 54° 46½' N.)

39. ROUND POINT, Southeastern shore of Zarembo Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160—Sheet 37.

All that part of the point lying on southeasterly side of a true northeast and southwest line drawn across

the point at a distance of 608 feet northwest true from the southeasternmost part of the low water line.

(Approx. Long. 132° 39½' W. Lat. 56° 16½' N.)

40. ROUND ROCK, Frederick Sound, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8200 —Sheet No. 38.

A barren rock about 40 feet high located 3 nautical miles 254° true from the south end of West Brother Island.

(Approx. Long. 133° 56' W. Lat. 57° 15½' N.)

41. SAND POINT, Popof Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8700— Sheet No. 34. (See sheet for Range Island)

All that portion of the extreme western part of Popof Island lying on west side of a true north and south line drawn across the point at a distance of 760 feet east true from the most westerly part of the high water line at the point.

(Approx. Long. 160° 31½' W. Lat. 55° 19' N.)

42. SLEDGE ISLAND, Bering Sea, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 9380—sheet No. 39.

Island 20½ nautical miles westerly from the town of Nome, Alaska.

(Approx. Long. 166° 13' W. Lat. 64° 29' N.)

43. SNIPE ROCK, Ogden Passage, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8280— Sheet No. 40.

Small barren rock occupied by structure of Snipe Rock Light, located 340 yards 147° true from south point of Herbert Graves Island.

(Approx. Long. 136° 10½' W. Lat. 57° 38' N.)

44. SOUTH CRAIG POINT, Zarembo Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 41.

All that part of the point lying on the easterly side of a true north and south line drawn across the point at a distance of 800 feet west true from the most easterly projection of the low water line.

(Approx. Long 132° 37½' W. Lat. 56° 23' N.)

45. SPASSKAIA ISLAND, Icy Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8302— Sheet No. 42.

Two small islets about 30 feet high located about 7¾ nautical miles southwesterly from Point Couverden; including adjacent rocks and reefs not covered at low water.

(Approx. Long. 135° 16' W. Lat. 58° 07½' N.)

46. SUKOI ISLETS, Frederick Sound, Alaska, shown on section of U. S. Coast and Geodetic Survey Chart No. 8200—Sheet No. 43.

Western Island of group.

(Approx. Long. 132° 56' W. Lat. 56° 54' N.)

47. THE SISTERS, Icy Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8302. See sheet for Spasskaia Island. No. 42.

Island about 6½ nautical miles westerly from Point Couverden, about ½ mile long and 150 feet high;

including adjacent rocks and islets not covered at low water, and Sisters Reef, located 1 mile to westward.

(Approx. Long. 135° 15½' W. Lat. 58° 11' N.)

48. THREE HILL ISLAND, Cross Sound, Alaska, entrance to Port Althorp, shown on U. S. Coast and Geodetic Survey Chart No. 8304. See sheet for Althorp Rock No. 1.

Pinnacle rock about 32 feet high on north shore of Three Hill Island occupied by Three Hill Island Light.

(Approx. Long. 136° 24' W. Lat. 58° 11' N.)

49. TURN POINT, Portland Canal, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8051 —Sheet No. 44.

Beginning at a point on low water line, west shore of Portland Canal, 3040 feet in a direct line, southerly from the center of Turn Point Beacon, a tripod anchored to concrete piers, thence west true 1520 feet, thence north true, 5050 feet, more or less, to an intersection with the low line, thence southeasterly and southerly following the windings of low water line to point of beginning.

(Approx. Long. 130° 03½' W. Lat. 55° 26½' N.)

50. TURN ROCK, Tlevak-Strait, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8151—See sheet for Goat Island No. 14.

Small rock, awash at highest tide, located near south shore Goat Island and occupied by Turn Rock Beacon; a spindle and concrete pier.

(Approx. Long. 132° 55' W. Lat. 55° 10' N.)

51. VALDEZ NARROWS, Prince William Sound, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8519—Sheet No. 45.

Beginning at a point on low water line on southeast shore of Valdez Narrows, from which Middle Rock Light bears N. 40° W. true, distance about ⅝ nautical mile, thence S. 35° W true, 6525 feet more or less to an intersection with the low water line on south side of entrance to Narrows, thence northerly and northeasterly, following the windings of the low water line to point of beginning.

(Approx. Long. 146° 39' W. Lat. 61° 04' N.)

52. WEST POINT, Kupreanof Island, entrance to Portage Bay, show on U. S. Coast and Geodetic Survey Chart No. 8210. See sheet for East Point, No. 9.

All that part of the point lying east of a true north and south line drawn across the point at a distance of 600 feet west of the most easterly part of the low water line at the point.

(Approx. Long. 133° 20' W. Lat. 57° 00' N.)

53. WORONKOFSKI POINT, Woronkofski Island, Alaska, shown on U. S. Coast and Geodetic Survey Chart No. 8160. See sheet for High Point, No. 18.

Beginning at a point from which Woronkofski Beacon, a white slatted tripod, bears west true, distant 1520 feet, thence south true 1100 feet, thence west true 1824 feet, more or less, to an intersection with low water line, thence northeasterly and easterly, following the windings of the low water line, to a point from which point of beginning bears

south true, thence south true, 420 feet, more or less, to point of beginning.

(Approx. Long. 132° 30' W. Lat. 56° 26' N.)

CALVIN COOLIDGE

THE WHITE HOUSE,
June 27, 1925

[No. 4257]

EXHIBIT 11

Reference No. 2937

PLO No. 7056
Part Affected: AA-16807
Effective Date: 6/06/94

Federal Register Data

Published:6/06/94
No.: 107

Volume: 59

Page: 29206 & 29207

43 CFR Public Land Order 7056

[AK-932-4210-06; AA-16807]

Partial Revocation of Executive Order No. 4257 Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects approximately 54.47 acres of National Forest System land and 8.91 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Woronkofski Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land within the Forest to such forms of disposition as may by law be made of National Forest System land. The land has been and will continue to be subject to the Tongass National Forest reservation. Upon revocation, the public land will

be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4257 dated June 27, 1925, which withdrew National Forest System land and public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

A parcel of land located within secs. 5 and 6 of T. 63 S., R. 83 E., described as U.S. Survey No. 1712, excluding the following parcel:

Beginning at a point which is S. 87°21'006" E., 309.65 feet from U.S.L.M. No. 1712, at approximate latitude 56°26'00" N., longitude 132°30'30" W";

Thence S. 23°20'04" W., 219.26 feet;
Thence N. 68°00'42.2" W., 163.49 feet;
Thence N. 58°17'00" W., 69.30 feet;
Thence N. 25°03'00" W., 56.10 feet;
Thence N. 20°08'00" W., 42.24 feet;

Thence N. 39°08'00" E., 50.16 feet;
Thence S. 79°08'00" E., 257.40 feet
Thence N. 66°00'00" E., 56.10 feet to the point of beginning, containing approximately 1 acre.

The area described, less the excluded parcel, contains approximately 54.47 acres of National Forest System land and 8.91 acres of public land, for a total of approximately 63.38 acres.

2. At 10 a.m. on July 6, 1994, the National Forest System land described above will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

At 10:00 a.m. on July 6, 1994, the public land described above will be opened to location and entry under the United States mining laws for metalliferous minerals, pursuant to the term of 30 U.S.C. 49(a) (1988), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-13580 Filed 6-3-94; 8:45 am]

EXHIBIT 12
Pages 1-2

DEPARTMENT OF THE INTERIOR
WASHINGTON

January 24, 1924.

Dr. Charles C. Adams,
Roosevelt Wild Life,
Forest Experiment Station,
Syracuse, New York.

Dear Dr. Adams:

I have your letter of January 21, 1924, and thank you for sending me the interesting paper by Dr. W. S. Cooper on the ecological history of Glacier Bay.

In response to your request as to the proper method of presenting the desire of the Ecologoical Society that Glacier Bay, Alaska, be set aside as a national park or monument, I have to advise as follows: To create a national park requires an act of Congress, and as there are some thirteen bills now pending to create parks, with a vast amount of other legislation, it might be difficult to obtain such an act covering the area to which you refer. National monuments are authorized to be established by the President of the United States, in his discretion, by proclamation, to protect and preserve historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest situated on lands owned or controlled by the United States, the limits of such reservations to be confined to the smallest area compatible with the proper care and management of the objects to be protected (act of June 8, 1906). Such monuments, when established, fall automatically under the care, protection, and control of the Department of the Government having

jurisdiction of the land, i.e., if a part of the public domain, they are under the supervision of this Department; if within the limits of a national forest, under the jurisdiction of the Secretary of Agriculture; if within a military reservation, under the jurisdiction of the Secretary of War.

Apparently, from the map of Alaska issued by the General Land Office in 1917, Glacier Bay area is a part of the public domain, and under the jurisdiction of this Department. The method of procedure in applying for the creation of a national monument covering this area would be to address an application or petition to the President of the United States, through the Secretary of the Interior, setting forth the desire for the establishment of the monument and the reasons therefor, particularly the historical or scientific features which, in your opinion, would justify the establishment of the monument. Such a petition could be presented on behalf of the Ecological Society, signed by its officers, and might be indorsed or concurred in by any others interested. I am sure that the same will be given careful and sympathetic consideration by Secretary Work.

With regards and best wishes, I am,

Sincerely yours,

(Sgd) E.O. Finney

First Assistant Secretary.

EXHIBIT 13

THE NEW YORK STATE COLLEGE OF FORESTRY
AT SYRACUSE UNIVERSITY
FRANKLIN MOON, DEAN

THE ROOSEVELT WILD LIFE
FOREST EXPERIMENT STATION

CHARLES C. ADAMS, DIRECTOR

SYRACUSE, N.Y.
January 28, 1924.

Mr. E. C. Finney,
First Assistant Secretary,
Department of the Interior,
Washington, D. C.

Dear Mr. Finney: -

I wish to thank you very much indeed for your letter of January 24 indicating how the Ecological Society should proceed with its plans for the Glacier Bay National Monument. I have sent on this information to Dr. Cooper so that all the materials can be sent on very soon to Secretary Work. I appreciate very much your courteous assistance in this matter.

Very sincerely,

CHAS. C. ADAMS

CCA:VAB

EXHIBIT 14
Pages 1-2

"An Undisturbed Area in Every National Park
and Public Forest"

ECOLOGICAL SOCIETY OF AMERICA

COMMITTEES ON PRESERVATION
OF NATURAL CONDITIONS

Composed of One Hundred Members Distributed in the
Various States and Provinces of the United States
and Canada

W. G. WATERMAN, SENIOR CHAIRMAN

* * * *

February 21, 1924.

President Calvin Coolidge,
Washington, D.C.

Dear Mr. President:

I have the honor to transmit for your consideration a group of documents relating to a project to establish a National Monument at Glacier Bay, Alaska. This plan was initiated at the Boston meeting of the Ecological Society of America in December, 1922, at which time a committee was appointed to consider the feasibility and advisability of establishing such a reservation. This committee reported favorably at the Cincinnati meeting in December, 1923, and was continued, with instructions to represent the Society in an effort to bring about a consummation of the plan.

The documents submitted are: first, a statement prepared by the Committee of the Ecological Society, includ-

ing recommendations in summary form, resolutions passed by the Society and a presentation of data upon which the recommendations are based; second, a reprint of a paper by the Chairman of the Committee describing certain scientific features of the region; third, letters in support of the project, contributed by Governor Gifford Pinchot of Pennsylvania and Dr. Harry Fielding Reid of Johns Hopkins University, the eminent authority on glaciers, who made the first thorough study of the region under consideration. The plan has been presented to numerous organizations and individuals, and these have been requested to transmit their views on the matter directly to the Secretary of the Interior and the Director of the National Park Service.

The Ecological Society feels that, as a National Monument, the area should be retained within the jurisdiction of the Department of the Interior, as it might in the future be desirable to convert it into a National Park.

It should be stated, for your information, that the Ecological Society of America is an organization of more than six hundred members, largely professional naturalists, representing the leading scientific and educational institutions of the United States and Canada.

Very respectfully,

THE ECOLOGICAL SOCIETY OF AMERICA

E.N. Transeau
President.

[illegible] Secretary

Williams S. Cooper Chairman for Glacier Bay, Committees on Preservation of Natural Conditions

EXHIBIT 15

EXECUTIVE ORDER

ALASKA

It is hereby ordered, under authority of the act of Congress approved June 25, 1910 (36 Stat., 847), as amended by the act of August 24, 1912 (37 Stat., 497), that the public lands lying within the hereinafter described boundaries be, and they are hereby, temporarily withdrawn pending determination as to the advisability of including the same in a national monument, subject to the conditions of said acts and to all prior claims lawfully initiated and maintained:

Beginning at the western extremity of Cape Fairweather on the west coast of Alaska, thence in a northeasterly direction to the summit of Mt. Fairweather on the international boundary between Canada and the United States, thence following such boundary easterly, northeasterly and easterly to Monument No. 157 of the survey of such boundary by the International Boundary Commission approved June 9, 1923; thence east following the latitude of said monument to an intersection with the right bank of Chilkat Inlet; thence southerly along the right banks of said inlet and Lynn Canal to Icy Strait; thence westerly along the north shores of Icy Strait and Cross Sound to the Pacific Ocean; thence in a general northwesterly direction along the shore of the Pacific Ocean to Cape Fairweather, the place of beginning containing approximately 2,560,000 acres.

CALVIN COOLIDGE

THE WHITE HOUSE,
April 1, 1924.

[No. 3983.]

EXHIBIT 16
Pages 1-2

GLACIER BAY NATIONAL MONUMENT
ALASKA

By the President of the United States of America
A Proclamation

Whereas, There are around Glacier Bay on the Southeast coast of Alaska a number of tidewater glaciers of the first rank in a magnificient setting of lofty peaks, and more accessible to ordinary travel than other similar regions of Alaska,

And, Whereas, The region is said by the Ecological Society of America to contain a great variety of forest covering consisting of mature areas, bodies of youthful trees which have become established since the retreat of the ice which should be preserved in absolutely natural condition, and great stretches now bare that will become forested in the course of the next century,

And Whereas, This area presents a unique opportunity for the scientific study of glacial behavior and of resulting movements and development of flora and fauna and of certain valuable relics of ancient interglacial forests,

And Whereas, The area is also of historic interest having been visited by explorers and scientists since the early voyages of Vancouver in 1794, who have left valuable records of such visits and explorations,

Now, Therefore, I, CALVIN COOLIDGE, President of the United States of America, by virtue of the power and authority in me vested by section two of the act of Congress entitled: "An Act for the preservation of American Antiquities", approved June 8, 1906 (34 Stat., 225), do proclaim that there is hereby reserved from all forms of appropriation under the public land laws, subject to all prior valid claims, and set apart as the Glacier Bay National Monument, the tract of land lying within the following described boundaries, to wit:

Beginning at the most southerly point of North Marble Island in approximate latitude 58° 40′ north and approximate longitude 136° 4′ west as shown on Coast and Geodetic Survey chart No. 8306; Thence southeasterly to the most westerly point of the largest island at the entrance of Bear Track Cove in approximate latitude 58° 34′ north and approximate longitude 135° 56′ west; thence following the mean high water of the southerly shore to the most easterly point of said island; thence east on a parallel of latitude to the crest of the divide between the waters of Bear Track Cove and Bartlett Cove; thence northeasterly along this divide to the summit of the divide between the waters of Excursion Inlet and Glacier Bay; thence northerly along this divide to the crest of the divide between the waters of Glacier Bay and Lynn Canal; thence northerly and westerly along this divide to the International Boundary line between Alaska and British Columbia; thence southwesterly along the International Boundary line to the summit of Mt. Fairweather; thence southeasterly to the summit of Mt. Lituya; thence easterly and southerly along the divide between the waters of the Pacific Ocean and the waters of Glacier Bay and Icy Strait to the summit of Mt. La Perouse; thence easterly across Brady Glacier to the summit of the mountain

marked 4480 on the Coast and Geodetic Survey chart No. 8306 in approximate latitude 58° 33′ north and approximate longitude 136° 38′ west; thence northeasterly to the summit of the mountain marked 4030 on said chart in approximate latitude 58° 34′ north and approximate longitude 136° 33′ west; thence northeasterly to the most southerly point on the north shore of Geikie Inlet; thence northeasterly following the mean high water of this shore to the most easterly point of land at the entrance of Geikie Inlet, thence southeasterly to the place of beginning, containing approximately 1,820 square miles.

Warning is hereby given to all unauthorized persons not to appropriate or injure any natural feature of this monument or to occupy, exploit, settle or locate upon any of the lands reserved by this proclamation.

And I do also proclaim that my order No. 3983 of April 1, 1924, withdrawing the public lands within the hereinafter described limits pending determination of the area therein which should be set apart for national monument purposes, is hereby revoked:

Beginning at the western extremity of Cape Fairweather on the west coast of Alaska, thence in a northeasterly direction to the summit of Mt. Fairweather on the international boundary between Canada and the United States, thence following such boundary easterly, northeasterly and easterly to Monument No. 157 of the survey of such boundary by the International Boundary Commission approved June 9, 1923; thence east following the latitude of said monument to an intersection with the right bank of Chilkat Inlet; thence southerly along the right banks of said inlet and Lynn Canal to Icy Strait; thence westerly along the north shores of Icy Strait and Cross Sound to the Pacific Ocean; thence in a general northwesterly direc-

tion along the shore of the Pacific Ocean to Cape Fairweather, the place of beginning containing approximately 2,560,000 acres.

And I do further proclaim and make known that pursuant to Public Resolution No. 29 of February 14, 1920 (41 Stat., 434), as amended by Resolutions Nos. 36 and 79, approved January 21 and December 28, 1922, respectively (42 Stat., 358, 1067), it is hereby ordered that the public lands in that portion of the area last above described not included in said Glacier Bay National Monument by this proclamation, subject to valid rights and the provisions of existing withdrawals, shall be opened only to entry under the applicable homestead laws by qualified ex-service men of the war with Germany, under the terms and conditions of said resolutions and the regulations issued thereunder, for a period of ninety-one days beginning with the sixty-third day from and after the date hereof, and thereafter to appropriation under any public land law applicable thereto. Subsequent to the date hereof and prior to the date of restoration to general disposition as provided herein, no rights may be acquired to the lands so restored by settlement in advance of entry, or otherwise except strictly in accordance herewith.

The Director of the National Park Service, under the direction of the Secretary of the Interior shall have the supervision, management, and control of the Glacier Bay National Monument, as provided in the act of Congress entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat., 535), as amended June 2, 1920 (41 Stat., 732).

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

[SEAL] DONE at the City of Washington this 26th day of February in year of our Lord One thousand nine hundred and twenty-five, and of the Independence of the United States of America the one hundred and forty-ninth.

CALVIN COOLIDGE

By the President:
CHARLES E. HUGHES
Secretary of State

[No. 1733]

EXHIBIT 17

The President

EXCLUDING CERTAIN LANDS FROM THE TONGASS NATIONAL FOREST AND ADDING THEM AND OTHER LANDS TO THE GLACIER BAY NATIONAL MONUMENT—ALASKA

BY THE PRESIDENT
OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS it appears that certain public lands, part of which are within the Tongass National Forest, adjacent to the Glacier Bay National Monument, in Alaska, have situated thereon glaciers and geologic features of scientific interest; and

WHEREAS a portion of the aforesaid public lands contiguous to the said monument are necessary for the proper care, management, and protection of the objects of scientific interest situated on the lands included within the said monument; and

WHEREAS it appears that it would be in the public interest to reserve all of the aforesaid public lands as a part of the said monument:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by the act of June 4, 1807, 30 Stat. 11, 34, 36 (U. S. C., title 16, sec. 473), and the act of June 8, 1906, c. 3060, 34 Stat. 225 U. S. C, title 16, sec. 431), do proclaim that all of the following-described lands which lie within the Tongass

National Forest, in Alaska, are excluded therefrom, and that, subject to valid existing rights, all the following-described lands in Alaska are hereby added to and made a part of the said Glacier Bay National Monument:

Beginning at the summit of Mount Fairweather, on the International Boundary line between Alaska and British Columbia; thence southeasterly along present southern boundary of Glacier Bay National Monument to the point of the divide between the waters of Glacier Bay and Lynn Canal where said divide is forked by the headwaters of Excursion Inlet; thence easterly and southeasterly along the divide between the waters of Excursion Inlet and Lynn Canal to a point in approximate latitude 58° 27' N., longitude 135° 18' W., where said divide meets a subsidiary divide between streams flowing into Excursion Inlet; thence westerly and northwesterly along said subsidiary divide to the east shore of Excursion Inlet; thence due west to the center of the principal channel of Excursion Inlet; thence southerly along the center of the principal channel of Excursion Inlet to its junction with the Icy Passage; thence westerly and southwesterly along the center of Icy Passage, North Passage, North Indian Pass, and Cross Sound to the Pacific Ocean; thence Northwesterly following the general contour of the coast at a distance of 3 nautical miles therefrom to a point due west of the mouth of Seaotter Creek; thence due east to the north bank of Seaotter Creek; thence due east to the north bank of Seaotter Creek and easterly along the north bank of Seaotter Creek to its headwaters; thence in a straight line to the summit of Mount Fairweather, the place of beginning. Containing approximately 904,960 acres.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove

any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of the monument as provided in the act of Congress entitled "An Act to establish a National Park Service, and for other purposes," approved August 25, 1916, 39 Stat. 535 (U. S. C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 18" day of April in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-third.

[SEAL]

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL
The Secretary of State.

[*No. 2330*]

[*F.R. Doc. 39-1369; Filed, April 20, 1939; 12:44 p.m.*]

EXHIBIT 18
Pages 1-5

UNIVERSITY OF MINNESOTA
COLLEGE OF LITERATURE, AND THE ARTS
Minneapolis

DEPARTMENT OF BOTANY Feb. 27, 1934.

Mr. H. C. Bryant,
Office of International Parks,
Department of the Interior
Washington, D. C.

Dear Mr. Bryant:

I am sending you several publications of mine relating to the Glacier Bay area. Can you tell me if there have been any recent developments with regard to making the area a national park. Having been more or less instrumental in having it set apart as a national monument, I am naturally interested in its future. A couple of years ago Senator Walcott had such a project in mind, involving a considerable increase in the area included.

Very truly yours,

W. S. COOPER,
Professor,
Department of Botany

WSC:EMF

OUR AMERICAN GRIZZLIES NEED A HOME

[PHOTO OMITTED]

This beautiful view of virgin forest, unspoiled lakes and rugged peaks is typical of Admiralty Island, which is proposed to set aside as a sanctuary for Alaskan grizzly and brown bears, and to hold inviolate for nature lovers as well.

THE LAST OF America's big bears—the grizzlies and brown bears of Alaska—face extinction. Of the famous California grizzly bears the few remaining specimens disappeared recently, and only isolated stragglers are left elsewhere in the United States. Prompt and decisive action alone will prevent the grizzlies and brown bears in Alaska, their last stronghold in America, from disappearing down the same trail of unreasoning butchery.

Congress will soon have before it in the Admiralty National Park Bill, which would make a national park and bear sanctuary of Admiralty Island and part of Baranof Island, opposite Juneau, Alaska. The story of this bill is a tale of hard fighting against the injustice that ignorance can bring about. Unless this bill is passed, the last of America's magnificent great wild animals may soon join other species indexed as "now extinct" in the annals of natural history—and for no better reason than that as a nation we awoke to their desperate plight too late to save them from unjustified and unlimited slaughter.

Individual efforts on behalf of these much misrepresented animals have been carried on for some years in various parts of the country. Writers, conservationists, lovers of wild life, and societies such as the New York Zoological Society and the American Society of Mammalogists have realized the danger and have taken up the cudgels, each in its own way. Now, through the National

Association of Wild Life Conservationists, it is proposed to bring together in one great cooperative effort the activities of these various individuals and groups, so that there can be put behind the Admirality National Park Bill a coordinated energy that will drive it forward to success.

NEITHER FEROCIOUS OR VICIOUS

Let us outline briefly the case of the American big bears. These are the reasons advanced in defense of the present quasi-official and generally practiced policy of killing of the Alaskan bears without regard to consequences of extermination. By the unknowing it is claimed that these bears are innately vicious—that they attack and kill men without provocation; that they are stock killers; that they rob food caches. Give the average man or woman a list of wild animals, with instructions to rate them according to ferocity, and you will find in almost every case the grizzly bear credited—or, rather, discredited—with a place very near the top. Public opinion is generally based on bedtime stories in which the grizzly features as the villain, and on tales of hunters who return from Alaska ready and willing to tell newspaper reporters how, in the face of extreme peril, they shot big bears.

Let us answer these charges in turn. First as to the big bears' ferocity. Suart Edward White, well known writer and naturalist, states that in the course of his many visits to Alaska to gather material for articles on wild life, he has talked to scores of salmon watchers whose work brings them into close contact with one to a dozen grizzly and brown bears every day of their season. These men without exception report that they have never had any trouble with the great creatures.

"All of these watchers, like sensible men, conduct their business armed," Mr. White says, "but I have yet to hear of one compelled to use his rifle."

Mr. White further comments that to his knowledge the only men who have had trouble with big bears are "those who, previously impressed with the ferocity legend, have hastily opened fire, sometimes with inadequate weapons, sometimes with ill aim."

Mr. John M. Holzworth, president of the National Association of Wild Life Conservationists and author of "Wild Grizzlies of Alaska" and "Baby Bears," spent three seasons in Alaska photographing more than 200 big bears at ranges from eight to 200 feet. Not once was he attacked.

Investigation of reported attacks of grizzlies or brown bears upon human beings have almost invariably divulged that the "attacking" bear was first wounded or cornered by the hunter and charged in a courageous attempt at self defense. No man can deny any animal's right to fight back when attached: any other course of action would be cowardly—and the great grizzly and brown bears are not cowards.

WHAT LEADING EDITORS SAY—

PROTECTION FOR BEARS

"Protect bears from people? Don't you mean protect people from bears?" No, gentle reader, we mean protect bears from people. The bears are Alaska brown and grizzly bears on Admiralty and Chicagof Islands opposite Juneau. Creatures of great dignity and intelligence, they are harmless unless attacked or cornered. Yet they are threatened with extinction . . . It would be a pity for the brown bear and the grizzly to go the way of many other magnificent specimens of animal life. Admiralty and Chicagof Islands, lying at the very entrance to Alaska, are ideal as sanctuaries and at the same time easily accessible, so that the tourist and the naturalist can visit them and see their wild life, floral and fauna, without difficulty. The bears which make these islands their homes should be saved from the fate of the buffalo."

EVENING POST, New York, N.Y., Jan. 22, 1932.

LET CONGRESS ACT

"Congress ought to respond promptly and favorably to the request of the New York Zoological Society committee which asks that a sanctuary for the grizzly and brown bears be established on Admiralty and Chicagof Islands.

"For these great bears, the largest on the North American continent, and in fact the largest in the world, are in grave danger of extermination.

"The Alaska bears take but small toll of animal life in the woods. They do not threaten man unless he corners or wounds them. As magnificent specimens of the American fauna they are entitled to the protection which Mr. Holzworth's committee asks for them. If Congress fails to give it they will inevitably go the way of the bison."

DAILY EAGLE, Brooklyn, Jan. 23, 1932.

PROTECT THE BEARS

"The bear stories of childhood, wherein someone always protected human beings from these large American animals, have been turned about. Now human beings are trying to protect the bears by law. The bear is one of the most intelligent of all wild animals. He should be saved from extinction."

NEWS, Albany, N.Y., Jan. 19, 1932

PROTECT THE AMERICAN GRIZZLY

"Advocates of the preservation of wild life on the North American continent have had to wage persistent battle for their cause. Much has been accomplished in that field of conservation, with the aid of protective game laws and in the creation of sanctuaries, but more must be accomplished in certain important species are to be saved.

"There are, to be sure, thousands to men, in and out of Alaska, who will say that the country could get along very well without grizzlies. But with the passing of these and other wild game species America would have no great outdoors left. The wilderness would be tamed forever. And something of value would be lost that could never be restored."

JOURNAL, Dallas, Tex., Jan. 21, 1932

SAVE THE BEAR

. . . "The appeal of the people who want to save the bear has our sympathy, and we suggest that our congressional delegation support the bill that will have for its purpose the protection of the big Alaska brutes. People do not need the skins. It would be better perhaps if more folks patronized the cotton mills and woolen mills and let the wild life have a fair show where there is still a fair supply of it."

DAILY CAPITOL JOURNAL, S. D., Jan. 21, 1932

SHOULD NOT BECOME EXTINCT

"The New York Zoological Society is supporting a bill In Congress to create a sanctuary for Alaskan brown and grizzly bears on Admiralty and Chicagof Islands.

"If the project succeeds, the islands will be much visited in the near future by tourists. If it fails, the bears may become extinct.

"The animals should be protected from the fate which will overtake them if no sanctuary is provided. Small animals are tenacious of life even in densely populated areas and without protection. Weasels thrive even in the outskirts of cities, and foxes contrive to live in city parks. But huge animals cannot survive, even in the remoter countries of our modern world, without the succor of our governments."

TIMES, Louisville, Ky.

THE NEW YORKER AGREES

"A committee has approached us to ask if we would help in the work of protecting and preserving the brown and grizzly bears of Alaska. Need we say we will? Once we spend six weeks in Alaska, and although we never happened to have an opportunity to protect a grizzly from the predatory old paper-pulp interests, which threaten their extinction, we always stood ready to. We are still ready.

"The islands of the Inside Passage, where the bears live, seemed to us lovely, perfect. We should not want one of them changed by the extinction of so much as one bear, or the establishment of even one pulp mill. Grizzlies are certainly less dangerous than the tabloids that are printed from paper pulp . . ."

THE NEW YORKER, Jan. 23, 1932

BEAR PRESERVES

"The Newark Evening News editorially says that 'Congress should take a few minutes off from its consideration of the bear market to pass the bill creating island sanctuaries in Alaska, for the grizzly and brown bears. These great, intelligent and dignified creatures are facing extinction . . . Out of all the huge and unused territory the United States possesses, a few square miles can certainly be allotted to the bears." . . . as the Newark, News suggests, Congress should turn for a few minutes from Wall Street and look after the bears of Admiralty and Chicagof."

HOME NEWS, New Brunswick, N. J. Jan. 22, 1932

THE BEARS OF ALASKA

"Zoological societies have their hands full in trying to preserve wild life in America. Many hunters are rapacious, while legislators are hard to convince of the necessity of protective laws. The case for the brown and grizzly bears of Alaska and the near-by islands is being presented with force by the New York organization.

"Much of the animosity against them, as the Chairman of a Committee of the society, Mr. John Holzworth, points out, is due to ignorance. Both the brown and grizzly bear, though more belligerent than the black, are harmless unless attacked. He says that he spent three successive summers in the heart of the country where they roam freely, taking photographs at ranges of from eight to 150 feet, without being once attacked . . . .

"As The Sportsman says, the game act does not apply to natives, some of whom have gone so far as to resort to poison. There is thus real danger that the bears will become extinct, as the buffaloes would be if nothing had been done to protect them. The Sportsman suggests that the islands opposite Juneau, particularly Admiralty Island,

offer unique advantages as a permanent reserve for all four species of Alaskan bears. The alternative is the sure, though gradual, extinction of them all. It is for Congress to act in this matter, and its action should not be too long postponed."

ENQUIRER, Philadelphia, Pa., Jan. 27, 1932

A PRESERVE FOR ALASKA BEARS

"The most impressive natives of Alaska are the big brown and grizzly bears. Having unfortunately, few friends in the territory, the bears are being killed off at a rate which they cannot withstand. In order that a fair number may survive, a bill is to be introduced in Congress to provide sanctuary for these superb animals on Admiralty and Chicagof Islands near Juneau, the Alaska capital. Many friends of wild life, committees and individuals, are heartily in favor of giving the big bears a secure range of their own.

"They have almost no protection under the present laws, for, excepting in a few small areas, any resident may kill any number of grizzly and great brown bears at any time of the year . . . the bears are being hunted down. On Admiralty Island there are at least three thousand brown and grizzly bears, probably more than half the whole number of the animals in Alaska. On Chicagof Island there are not a few. These islands are most suitable for the proposed reserve. They are easily accessible to naturalists and tourists who like to rough it and the terrain is perfectly adapted to the bears' habits. Surely out of all Alaska a small principality can be saved for its grand aborigines."

HERALD TRIBUNE, New York, Jan. 19, 1932

The above editorials are only a few out of many which have been printed by the daily and magazine press of the country in behalf of the Alaskan bear sanctuary

NOT KILLERS OF STOCK

The charge that the grizzlies and "brownies" are generally stock killers is equally unbased. In the first place, these bears, although they are known as "carnivorous," eat many foods. They dig for roots, eat grass, hunt for berries, fish in the streams when the salmon run, devour insects, grubs, larvae, mice, small rodents, decayed carrion or freshly killed flesh, with equal relish. That the big bear is not a killer of large animals is attested by the reports of naturalists and visitors to Alaska who have seen deer feeding unconcernedly when a grizzly passed within twenty yards in plain view, or mountain goats gather curiously to watch a bear dig for a marmot. Not long ago, in the case of bear shot as a stock killer, post mortem examination revealed that the bear had been subsisting wholly on a vegetable diet. Post mortem vindication, however, was of little value to the bear.

In connection with this charge of stock killing, it is relevant to comment that Admiralty and South Eastern Baranof Islands, the proposed sanctuary for bears, are uninhabited except for a small Indian village, and are unsuited for stock raising by reason of the terrain.

[PHOTO OMITTED]

John M. Holzworth makes good his contentions about the friendly nature of bears by entering the den at the Bronx Zoo and holding out a few tid bits to the great Alaskan brown bears.

It is true that bears will rob food caches whenever they get the chance. They are very inquisitive and they have tremendous appetites. The answer to this problem is very

simple. Construct caches that are inaccessible to bears; any experienced outdoor man knows how to do it.

The stories of hunters attacked by bears are always based on trouble that followed when the bear was cornered or attacked. Newcomers in bear country frequently become frightened at sight of a bear and fire "in self defense" when the bear has shown no signs of belligerence. Bears' eyesight is poor. They will stand up on their hind legs to get a better view of the visitor in their territory, and many a hunter believing the fiction that a bear charges on his hind feet, has opened fire hastily and with poor aim, laying himself open to the rightly dreaded fury of a wounded big bear.

Stewart Edward White has observed that with elementary common sense such accidents are avoidable, and that hundreds of sportsmen, including many women, kill their bear as safely as they would a cow in a pasture. He adds, "Indeed, in my opinion, the shooting of these animals is no great feat . . . I myself, had I been an Alaskan and so inclined, could probably have killed every one of the fifty I encountered last summer."

LAW GIVES LITTLE PROTECTION

What is the present legal status of these Alaskan bears? In 1902, due largely to efforts of the New York Zoological Society, there was passed an Alaskan game act which gave at least theoretical protection. Under its terms Alaskan residents and visiting sportsmen were limited to the killing of two or three bears each year, depending on the locality. In 1930 all protection was virtually withdrawn. Although visiting sportsmen are still held to their former limits, at the present time any resident of Alaska may kill any number of grizzly and brown bears except in several small areas, and in these a resident may kill any bear at any

time when *in his judgment* it is dangerous to life or property.

An investigator for the Senate Committee on Wild Life Resources recently returned from Alaska and reported that on Kodiak Island, which gave its name to the well-known Kodiak bear, the slaughter has reduced the bear population to a "low ebb." On most of the Alaska Peninsula they have likewise reached a point very near extermination.

SAVING BEARS SAVES FOREST

Fortunately there remain two areas, Admiralty and Baranof Islands, which so far have escaped the blight of wholesale slaughter, are well populated with both grizzly and brown bears, and are eminently suitable for both a national park and a bear sanctuary. At present these two islands, well known to those who have cruised the famous Inside Passage, have magnificent virgin forests of spruce, pine and hemlock, which the Admiralty National Park Bill would preserve for all time from lumbering depredation.

Admirality Island, almost 100 miles long and 20 to 40 miles wide, is estimated to have approximately half the big bear population of Alaska—about 3,000 brown and grizzly bears. Above the timberline tower great snow-covered peaks with glaciers along their sides glistening in the clear sunlight. Baranof, even more mountainous than Admiralty, rises 2,000 feet higher at its highest peak, offering scenic beauty comparing only to that of the Swiss Alps.

Both these islands are easily accessible—only six days' journey from New York City—and if opened up as a national park would attract into Alaska many visitors who

at present are diverted at Juneau from United States territory into the Yukon district. The very fact that Admiralty and Baranof are islands is in itself favorable to their selection as sanctuaries, as the bears that inhabit them could not in any way annoy Alaskan residents nor impede commercial development of the territory in general.

WILL OPEN TOURIST TRAILS

The plan of the Admiralty National Park Bill is to open up trails through these two islands, so that visiting tourists and naturalists may in the company of expert guides, enjoy this little known wonderland of virgin country and see and study the last of the great American wild animals in their native state.

These islands are already owned by the United States government and are not bringing in any revenue that would be cut off by this act. To develop them as a national park accessible to vistors would cost about $20,000 —an expenditure soon returned by tourist trade.

HOW TO HELP

For a year the fight in behalf of the Alaskan bears has been conducted by a joint committee of the New York Zoological Society and the American Society of Mammalogists, with the cooperation of the press and nature lovers in general. To bring the project to a successful issue and to head up in one body the conservation efforts of friends of wild life which hitherto have been scattering and sporadic, there has been incorporated under the laws of New York the National Association of Wild Life Conservationists, of which Mr. John M. Holzworth is founder and president.

Its chief aim, as expressed in its charter, is "to cooperate with the National and State Governments and their various

agencies and departments and regularly organized conservation and game societies and associations, in disseminating knowledge relating to animals, birds, and fish, and furthering their protection and conservation through constructive and protective laws and regulations, and the establishment of proper and adequate sanctuaries, preserves, national parks and primitive forest areas."

Nothing will help so much as taking membership in this organization, dedicated to the task of carrying on. The grades of membership are: Benefactor, upon payment of $5,000; Founder, $1,000; Patron, $250; Life, $50; Sustaining Member, $10; Annual, $2. Checks to Brian Mannix, Treasurer.

THE NATIONAL ASSOCIATION OF WILD LIFE CONSERVATIONISTS, INC.
51 Pine Street, New York City

Request your senators and congressmen to send you copy of the printed report of the hearing on Alaska bears before the U. S. Senate Committee on Wild Life Resources, and also to support the Admiralty National Park Bill.

Oh! Mister Hoover! Help! Help!

[CARTOON OMITTED]

LET ME KILL
'EM OFF SO I
CAN PROMOTE
ANOTHER
PAPER MILL

The Last of
The Alaskan
BROWN BEARS

WHEN WE HAVE SO MANY PAPER MILLS NOW,
THAT THE INDUSTRY IS ALMOST BANKRUPT

[CARTOON OMITTED]

OVER
PRODUCTION
OF PAPER

(Copyright 1932 New York Tribune, Inc.
Courtesy, N.Y. Herald-Tribune)

Typical of the editorial sentiment that the plea in behalf of the Alaskan bears has aroused in the press of the country is the above powerful cartoon by Jay N. Darling ("Ding") which first appeared in the New York Herald-Tribune. It pictures, as mere words cannot, one important factor in the strenuous fight to save the Alaskan grizzly and brown bears.

EXHIBIT 19
Pages 1-5

THE WHITE HOUSE
WASHINGTON

June 6, 1934.

MEMORANDUM FOR

THE SECRETARY OF THE INTERIOR

This horrifies me as much as it does my friend David Wagstaff. If these bears come under your jurisdiction, will you please have the matter checked up? It seems to me that that kind of slaughter ought to be stopped.

F. D. R.

98e

June 6, 1934.

Dear Dave:—

You are dead right about the slaughter of those bears. I am starting the machinery to stop that sort of thing from happening again.

Always sincerely,

David Wagstaff, Esq.,
Tuxedo Park
New York.

99e

June 30, 1934.

My dear Mr. Wagstaff:

At the request of the President, I am sending you the enclosed copy of a letter to him from the Secretary of the Interior.

Very sincerely yours,

Louis McH. Howe
Secretary to the President

David Wagstaff, Esq.;
Tuxedo Park,
New York.

Enclosure

100e

David Wagstaff
Tuxedo Park
New York

May — 30th 34.

Dear Franklin—

The enclosed speaks for itself—I only hope that something can be done to limit the slaughter of these great bears so that they will not follow the pigeon and the bison through our own lack of interest.

With best regards

Sincerely

DAVID WAGSTAFF

Hon. Franklin D Roosevelt
The White House. Washington—D.C.

101e

COPY

David Wagstaff
Tuxedo Park
New York

Dear Mr. Church—

Please don't continue to send me your letters on bear shooting from a yacht in Alaskan or the adjacent islands —All my life I have tried to be a sportsman and to live up to the reputation of my father and uncle—C. DuBois Wagstaff who was a great shot. Your account disgusts me and I sincerely hope that the Aleutian Islands will soon be made a sanctuary.

Yours—

DAVE WAGSTAFF

Campbell Church

EXHIBIT 20

THE WHITE HOUSE
WASHINGTON

January 25, 1939.

MEMORANDUM FOR

THE SECRETARY OF AGRICULTURE

During the *Hoover* Administration an attempt was made by certain large timber interests to get the cutting rights on Admiralty Island, Alaska. It is my recollection that *you and I blocked this* early in the Administration—partly because it looked like a bad bargain and partly because *Admiralty Island* has a wonderful growth of virgin timber and a wonderful growth of very large bears on it.

Would you be good enough to let me know the situation today? Is there any thought of selling timber? If we decide that it should be preserved as a permanent wildlife virgin forest tract, how can we make such a status permanent?

F. D. R.

EXHIBIT 21
Pages 1-2

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
STATE PARK DIVISION
Washington, D. C.

October 22, 1934

MEMORANDUM for The Secretary:

Herewith is submitted for your consideration a map of Glacier Bay National Monument in Alaska showing a proposed extension of boundaries and a summary of the situation with regard to this extension which has been under study by this service for several years.

Prior to the establishment of this Monument in February, 1925, the American Ecological Society emphasized the importance of preserving undisturbed for scientific observation a portion of the Alaskan coastal or post-glacial forest. In the decision on the original boundary lines in 1925 it was necessary to eliminate these coastal lands thereby leaving incomplete the biological factor which is so closely related to the glacial factor that it is probably as important as the glaciers themselves and certainly more subject to destruction.

Since the establishment of the Monument there have been consistent efforts on the part of biologists and conservationists toward a more adequate protection of the Alaska brown bear, as well as the preservation of a more typical stand of Alaskan coastal forest than is included in the present Monument boundaries. A few years ago

there was considerable agitation both for and against the establishment of a National Park on either Chicagof or Admiralty Island for the preservation of the Alaska brown bear. (The National Park Service has consistently avoided active participation in this controversy on the basis that these Islands are a valuable source of pulpwood, and that a national park solely for the purpose of protecting the Alaska brown bear could not be justified.

On September 29, 1932, Mr. Joseph S. Dixon, one of our filed naturalists, investigated the region and submitted a report recommending an addition to Glacier Bay National Monument as a more desirable means of achieving the preservation of the brown bear without sacrificing the commercial resources of Alaska.

This extension as now proposed involves the lands between the present boundaries and the Pacific Ocean, Cross Sound, North Passage and Icy Strait, together with the numerous clear water streams leading into these waters and providing important feeding grounds for the Alaska brown bear.

Although the Forest Service and the commercial interests have strenuously opposed the setting aside of either Chicagof or Admiralty Island as a National Park or Monument, they have expressed willingness to consider instead an addition to Glacier Bay National Monument. Representatives of the Forest Service in Alaska have stated that it would involve but few private holdings and would not interfere with the plans of the Department of Agriculture to develop the paper industry in Alaska. The proposed extension would necessitate the transfer of about 780 square miles of land within the Tongass National Forest.

If this proposed extension meets with your approval a letter will be drafted for your signature to the Secretary

of Agriculture informing him of the situation and asking for his reaction.

A. E. DEMARAY,
Acting Director.

Inclosure 445195

EXHIBIT 22

THE SECRETARY OF THE INTERIOR
WASHINGTON

December 10, 1934

The Honorable,
The Secretary of Agriculture.

My dear Mr. Secretary:

I am enclosing for your consideration a map of Glacier Bay National Monument in Alaska, showing the types of lands involved in the proposed extension of its boundaries.

Since the establishment of this monument, it has appeared that there is need for more adequate protection of the Alaska brown bear than the present limits of this reservation can afford, and for the preservation of a more typical stand of Alaskan coastal forest than is found within the existing monument boundaries.

This proposal extension involves the transfer of about 781 square miles of land now within the Tongass National Forest. Director Cammerer of the National Park Service has advised me that officials of the Forest Service have informally expressed willingness to consider the addition of these lands to the monument area.

If you approve consideration of this extension, I suggest that the Forest Service and the National Park Service complete the details of the proposed addition to this Monument.

Sincerely yours,

Secretary of the Interior.

Enclosure 591753
JLB:fmd
RHW:ejw
cc N.P.S. Office copy

EXHIBIT 23

FREDERICK K. VREELAND
90 West Street
New York

Jan. 13, 1932.

Hon. Horace M. Albright, Director,
National Parks Service
Washington, D.C.

Dear Mr. Albright:

Thank you sincerely for sending me a copy of Secretary Wilbur's new book. The book has not yet arrived but I will look forward with keen interest to receiving it and reading it carefully.

I am glad to know that the reorganized National Parks Association is taking up various projects for new parks, including some of my particular pets. I do hope it will be possible to put these through and get them while the getting is good, but that the National Parks Association may become a real help to you.

I wonder what you think of the plan on which some of us are working to get a new National monument in Alaska—preferably under the jurisdiction of the National Parks Service? While this started with the idea of protecting the brown bears, it looks now as if it has an ever more urgent necessity, if we are to preserve a museum specimen of the great coastal forests of Alaska including the splendid Sitka Spruce.

I am unable to see the necessity at this time of alienating the whole panhandle tract with adjacent islands, including as I understand it substantially all the big timber

of Alaska; of conceding this to a very limited monopoly; of making the concession on a merely nominal consideration; of tying up these lands for generations to come; of allowing this magnificent virgin timber—comprising largely the great Sitka Spruce whose quality is so fine that it has been selected for use in airplane construction—to be ground up into pulp when a second growth and plantation pulpwood is just as good; and to do all this at a time when the pulpwood market is suffering from overproduction.

Surely at least a part of this forest should be preserved. I cannot help wondering whether the tourists who are attracted by these forests will not do more for Alaska than the pulp mills.

Very sincerely yours,

FKV/JW

EXHIBIT 24

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON

January 14, 1932.

Frederick K. Vreeland,
90 West Street,
New York, N.Y.

Dear Mr. Vreeland:

It was nice of you to write me on January 13 about several matters of mutual interest. I would like to talk to you about the Alaska situation some time.

There is not very much that I can say publicly because I cannot get into difficulties with other bureaus in Washington. The Forest Service would never stand for tying up any of the big islands in the Alaska archipelago so there is not much use in talking about a national park to preserve either the timber or the Alaska brown bears.

Governor Parks and Steward Edward White, the writer, evolved a tentative plan last summer that they thought might meet the situation and it seems to me that it has much merit. They would enlarge the Glacier Bay National Monument on the mainland of Alaska, extending it up to the slopes of Mount Fairweather, thence down to the sea, taking in a considerable body of Alaska coastal forest. This would meet the point described in the third paragraph of your letter. I think also that everybody concedes that there are a lot of bears in that part of the coun-

try. I would be glad if you would think this idea over because your judgment will be worth a lot to us. I know of few men who think with such unerring accuracy as you do.

With best regards, I am

Sincerely yours,

HORACE M. ALBRIGHT
Director.

HMA-EG

EXHIBIT 25
Pages 1-3

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
STATE PARK DIVISION
Washington, D. C.

October 22, 1934

Memorandum to: Mr. Conrad L. Wirth

The original draft of this letter together with a letter to the Secretary of Agriculture was ready for signature at about the time the Secretary disapproved the procedure used in the presenting of the Carlsbad Caverns extension project. In view of the resulting uncertainty as to the transfer of National Forest lands, I thought it advisable to hold the Glacier Bay project over until the matter was adjusted. It seems that the accepted procedure now is to give the Secretary a memorandum for approval completely summarizing the situation. If he approves, a letter will be drafted for his signature to the Secretary of Agriculture giving him the details of the situation and suggesting a joint letter signed by both Secretaries transmitting a proposed proclamation to the President.

J. LEE BROWN

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
STATE PARK DIVISION
Washington, D. C.

October 22, 1934

MEMORANDUM for the Secretary:

Herewith is submitted for your consideration a map of Glacier Bay National Monument in Alaska showing a proposed extension of boundaries and a summary of the situation with regard to this extension which has been under study by this service for several years.

Prior to the establishment of this Monument in February, 1925, the American Ecological Society emphasized the importance of preserving undisturbed for scientific observation a portion of the Alaskan coastal or post-glacial forest. In the decision on the original boundary lines in 1925 it was necessary to eliminate these coastal lands thereby leaving incomplete the biological factor which is so closely related to the glacial factor that it is probably as important as the glaciers themselves and certainly more subject to destruction.

Since the establishment of the Monument there have been consistent efforts on the part of biologists and conservationists toward a more adequate protection of the Alaska brown bear, as well as the preservaton of a more typical stand of Alaskan coastal forest than is included in the present Monument boundaries. A few years ago there was considerable agitation both for and against the establishment of a National Park on either Chichagof or Admiralty Island for the preservation of the Alaska brown bear. (The National Park Service has consistently avoided active participation in this controversy on the basis that these Islands are a valuable source of pulpwood, and that

a national park solely for the purpose of protecting the Alaska brown bear could not be justified.

On September 29, 1932, Mr. Joseph S. Dixon, one of our field naturalists, investigated the region and submitted a report recommending an addition to Glacier Bay National Monument as a more desirable means of achieving the preservation of the brown bear without sacrificing the commercial resources of Alaska.

This extension as now proposed involves the lands between the present boundaries and the Pacific Ocean, Cross Sound, North Passage and Icy Strait, together with the numerous clear water streams leading into these waters and providing important feeding grounds for the Alaska brown bear.

Although the Forest Service and the commercial interests have strenuously opposed the setting aside of either Chichagof or Admiralty Island as a National Park or Monument, they have expressed willingness to consider instead an addition to Glacier Bay National Monument. Representatives of the Forest Service in Alaska have stated that it would involve but few private holdings and would not interfere with the plans of the Department of Agriculture to develop the paper industry in Alaska. The proposed extension would necessitate the transfer of about 780 square miles of land within the Tongass National Forest.

If this proposed extension meets with your approval a letter will be drafted for your signature to the Secretary of Agriculture informing him of the situation and asking for his reaction.

E. DEMARAY,
Acting Director.

JLB:klk

Inclosure 445195

EXHIBIT 26

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON

March 2, 1932

Mr. Stewart Edward White,
Little Hill,
Burlingame, Calif.

Dear Mr. White:

I am sure you will be interested in knowing that Mr. B. F. Heinzleman, Asst. District Forester, Alaska District of the U. S. Forest Service, was in my office a few days ago, and we discussed the preservation of the brown bear in southeastern Alaska.

Mr. Heinzleman has spent the last twelve years in Juneau, Alaska, and has become familiar with the southeastern vicinity. He outlined on a map of the Tongass Forest the proposed boundary extension for Glacier Bay National Monument. A copy of that map showing the proposed boundary is inclosed for your information.

You will notice several streams running from this area into the ocean, Cross Sound, Glacier Bay, and Icy Passage. Mr. Heinzleman stated that these streams are salmon spawning streams and are the main feeding ground for the brown bear. He also stated that along the coast just above Lituya Bay there exists the most magnificent stand of sitka spruce timber which is the finest example of coast forests

in Alaska. In this section he stated the Alaskan brown bear concentrated, and he believes that the park or monument would not be complete without this area.

Mr. Heinzleman stated that there was absolutely no mining development of any sort within the proposed boundaries, and the private holdings were very few and limited to the small surveyed area just north of Icy Passage.

The Forest Service, as stated by Mr. Heinzleman, would seriously object to having Admiralty Island or Chicaghof Island in any national park, as well as the area east of the proposed line on the peninsula between Icy Straits and the Lynn Canal because the Department of Agriculture is endeavoring to develop an industry in pulp timber for paper mills, etc. in this section.

Will you please give me your reaction to Mr. Heinzleman's suggestions?

Sincerely yours,

HORACE M. ALBRIGHT
Director

Incl. 129923
HLB-fmd

EXHIBIT 27
Pages 1-3

Address only the Commissioner of the
General Land Office Inc.
UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

In Reply Please Refer to
1479171 "A" FSH

January 13, 1933

Cooperation.

The Director,
National Park Service.

My dear Mr. Albright:

I have your letter of December 16, 1932, transmitting map and description of Glacier Bay National Monument, Alaska, with proposed extension.

The greater portion of the area proposed to be added to the monument is in the Tongass National Forest, having been so reserved by proclamation of June 10, 1925, and is therefore under the administration of the Department of Agriculture.

The records of this office show that a small area around Cape Spencer is reserved under Executive order of March 2, 1907, for lighthouse purposes, that a few scattered surveys have been made in the proposed extension for Indian allotments, trade and manufacturing sites, soldiers additional entries and mining claims, and that there are no power projects.

Reports from employees of this office and the Forest Service on file in this office show that the timber within that portion of the proposed extension near the coast is valuable. In this connection reference is had to the report of August 7, 1924, of Governor Parks, than Assistant Supervisor of Surveys and Public Lands, on the area temporarily withdrawn April 1, 1924, for monument classification, which shows the quality and distribution of the timber and is on file in your bureau.

The following is a description of the proposed enlarged monument:

> Beginning at the summit of Mt. Fairweather, on the International Boundary line between Alaska and British Columbia; thence northeasterly along the International Boundary Line, which is also the present boundary of Glacier Bay National Monument, to the summit of Mt. Harris;
>
> thence southeasterly and southerly along the divide between the waters of Glacier Bay and Lynn Canal, which is the present boundary of Glacier Bay National Monument, to a point where said divide is forked by the headwaters of Excursion Inlet;
>
> thence easterly and southeasterly along the divide between the waters of Excursion Inlet and Lynn Canal to a point where said divide meets the subsidiary divide immediately north of the first creek at the head of Excursion Inlet;
>
> thence southwesterly along said subsidiary divide to the east bank of the main stream flowing into Excursion Inlet from the north;
>
> thence southerly along the east bank of said stream to Excursion Inlet;

thence southerly along the center of Excursion Inlet to its junction with the Icy Passage;

thence westerly and southwesterly along the center of Icy Passage, North Passage, North Indian Pass and Cross Sound to the Pacific Ocean;

thence northwesterly along the Pacific coast, including all islands along the coast, to the mouth of Seaotter Creek;

thence easterly along the north bank of Seaotter Creek to its headwaters;

thence in a straight line to the summit of Mt. Fairweather, the place of beginning, excluding the surveyed lands in fractional Tps. 39 and 40 S., Rs. 57 and 58 E., and T. 40 S., R. 59 E., Copper River meridian, containing approximately 3,278 square miles.

The map transmitted is herewith returned.

Very respectfully,

Commissioner.

1012 mvd

EXHIBIT 28
Pages 1-2

July 20, 1934.

The Commissioner
General Land Office,
Washington, D. C.

My dear Mr. Commissioner:

By letter to you of July 5, I asked for the status of certain lands adjacent to the Glacier Bay National Monument in Alaska, which we are considering for a proposed extension of the Monument.

The boundaries described in that letter include all lands on the east side of the present Monument which might possibly be included within the proposed extension. Since the letter was sent, a decision has been made in favor of a more restricted extension. We would like to receive from your office an estimate of area, expressed in acres or in square miles, within the boundaries described as follows:

Beginning at the summit of Mt. Harris, on the International Boundary line between Alaska and British Columbia, thence northerly along the International Boundary line to a point where the said line crosses the Tairku River, at the foot of Tairku Glacier;

Thence east-southeasterly down the north bank of the Tairku River to a point opposite the mountain pass formed by the drainage into the headwaters of the Takhin River, and directly north of the foot of Takhin Glacier, which point is located at about 56° 10′ north and 136° 8′ 30″ west of Greenwich;

Thence southeasterly through the center of said pass to a point at the extreme upper end of the Takhin River watershed, and at the foot of Takhin Glacier, which point is located at about 59° 13″ north and 136° 7′ 30″ west of Greenwich;

Thence east-southeasterly down the north bank of the Takhin River to its junction with the Chilcat River; thence southeasterly and southerly down the main channel of the Chilcat River through Chilcat Inlet, through the channel west of Sullivan Island and down the west side of Lynn Canal, including all islands along the shore to the mouth of the Endicott River;

Thence west-southwesterly and southerly along the divide between the waters of the Lynn Canal and the Endicott River to a point where said divide joins the divide between the waters of Lynn Canal and Excursion Inlet, at the summit of a peak having an elevation of 4,000 feet, which point is located at about 58° 30′ north, and 135° 29′ west of Greenwich;

Thence northwesterly and westerly along the divide between the waters of Excursion Inlet and Lynn Canal to the point where the main divide between the waters of Glacier Bay and Lynn Canal is forked by the headwaters of Excursion Inlet, which point is also located on the present boundary line of Glacier Bay National Monument, at about 58° 44′ north and 135° 41′ west of Greenwich;

Thence northerly and northwesterly along the divide between the waters of Glacier Bay and Lynn Canal which is also the present boundary of Glacier Bay National Monument, to the point of beginning at the

summit of Mt. Harris, which is on the International Boundary line.

If it is possible, we would like to receive this information along with the land status of the area described in the previous letter.

Sincerely yours,

A. E. DEMARAY.
Acting Director.

JLB-fmd

EXHIBIT 29
Pages 1-4

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON

August 10, 1934.

Memorandum to: Mr. Moskey.

Attention: Mr. Brooks.

Attached is a draft of a Proclamation for the establishment of the proposed extension to Glacier Bay National Monument in Alaska, which was drawn up some time ago.

I have been unable to ascertain whether this was done in your office or not. Perhaps you will want to check it before we send it through.

CONRAD L. WIRTH
Assistant Director.

By J. LEE BROWN

Enclosure: 580337

GLACIER BAY NATIONAL MONUMENT—ALASKA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

WHEREAS it appears that the public interest would be promoted by adding to the Glacier Bay National Monument, Alaska, certain adjoining lands for the purpose of including within said monument additional lands on which there are located features of historical and scientific interest and for the protection of many forms of animal and plant life;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by virtue of the power in me vested by section two of the act of Congress entitled "An act for the preservation of American antiquities," approved June 8, 1906 (34 Stat. 225), do proclaim that such additional lands in Alaska be, and the same are hereby, added to and made a part of the Glacier Bay National Monument, and that the boundaries of the said monument as hereby changed are described as follows:

> Beginning at the summit of Mt. Fairweather, on the International Boundary line between Alaska and British Columbia; thence northeasterly along the International Boundary line, which is also the present boundary of Glaciar Bay National Monument, to the summit of Mt. Harris;
>
> thence southeasterly and southerly along the divide between the waters of Glacier Bay and Lynn Canal, which is the present boundary of Glacier Bay Na-

tional Monument, to a point where said divide is forked by the headwaters of Excursion Inlet;

thence easterly and southeasterly along the divide between the waters of Excursion Inlet and Lynn Canal to a point where said divide meets the subsidiary divide immediately north of the first creek at the head of Excursion Inlet;

thence southwesterly along said subsidiary divide to the east bank of the main stream flowing into Excursion Inlet from the north;

thence southerly along the east bank of said stream to Excursion Inlet;

thence southerly along the center of Excursion Inlet to its junction with the Icy Passage; thence westerly and southwesterly along the center of Icy Passage, North Passage, North Indian Pass and Cross Sound to the Pacific Ocean;

thence northwesterly along the Pacific coast, including all islands along the coast, to the mouth of Seaotter Creek;

thence easterly along the north bank of Seaotter Creek to its headwaters;

thence in a straight line to the summit of Mt. Fairweather, the place of beginning, excluding the surveyed lands in fractional Tps. 39 and 40 S., Rs. 57 and 58 E., and T. 40 S., R. 59 E., Copper River meridian, containing approximately 3,278 square miles.

Warning is hereby expressly given to all unauthorized persons not to apppropriate, injure, destroy, or remove

any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument, as provided in the act of Congress entitled "An act to establish a National Park Service, and for other purposes," approved August 25, 1916 (38 Stat. 535), and acts additional thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this day of April in the year of our Lord nineteen hundred and thirty-four and of the Independence of the United States of America the one hundred and fifty-eighth.

By the President:

Secretary of State.

EXHIBIT 30
Pages 1-2

UNITED STATES
DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WASHINGTON

Address Only
The Director National Park Service

October 17, 1938.

VIA AIR MAIL

Memorandum for Mr. Joseph S. Dixon:

There are enclosed a copy of a map and description of the area we are recommending for establishment as Glacier Bay National Park. The proposed park includes the present Glacier Bay National Monument and certain extensions on the southern and western sides.

Please advise by return airmail or radio whether the area shown on the attached map is the boundary recommended in your report of September 29, 1932.

Acting Supervisor of
Recreation and Land Planning

Enclosures 1889776

cc: R-IV
cc: Mr. Cahalane
cc: Mr. Little

WEL-fmd

DESCRIPTION OF PROPOSED GLACIER BAY NATIONAL PARK.

Beginning at the summit of Mt. Fairweather, on the International Boundary line between Alaska and British Columbia; thence northeasterly along the International Boundary line, which is also the present boundary of Glacier Bay National Monument, to the summit of Mt. Harris;

thence southeasterly and southerly along the divide between the waters of Glacier Bay and Lynn Canal, which is the present boundary of Glacier Bay National Monument, to a point where said divide is forked by the headwaters of Excursion Inlet;

thence easterly and southeasterly along the divide between the waters of Excursion Inlet and Lynn Canal to a point where said divide meets the subsidiary divide immediately north of the first creek at the head of Excursion Inlet;

thence southwesterly along said subsidiary divide to the east bank of the main stream flowing into Excursion Inlet from the north;

thence southerly along the east bank of said stream to Excursion Inlet;

thence southerly along the center of Excursion Inlet to its junction with the Icy Passage; thence westerly and southwesterly along the center of Icy Passage, North Passage, North Indian Pass and Cross Sound to the Pacific Ocean;

thence northwesterly along the Pacific coast, including all islands along the coast, to the mouth of Seaotter Creek;

thence easterly along the north bank of Seaotter Creek to its headwaters;

thence in a straight line to the summit of Mt. Fairweather, the place of beginning, excluding the surveyed lands in fractional Tps. 39 and 40 S., Rs. 57 and 58 E., and T. 40 S., R. 59 E., Copper River meridian, containing approximately 3,278 square miles.

EXHIBIT 31
Pages 1-2

ADDRESS ONLY THE COMMISSIONER OF THE
GENERAL LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE
WASHINGTON

November 30, 1938

In Reply Please Refer to
1479171 "E"

Description.

The Director,
National Park Service.

My dear Mr. Cammerer:

Reference is made to your memorandum of November 18 requesting a description of the area now proposed for addition to Glacier Bay National Monument as shown upon a map of the locality furnished us informally.

The following is a description of the extended Glacier Bay National Monument following the boundary line indicated on the map above referred to, which, except for the new area now proposed between Lynn Canal and Icy Strait, is identical with that furnished you in office letter dated January 13, 1933:

> Beginning at the summit of Mt. Fairweather, on the International Boundary line between Alaska and British Columbia; thence northeasterly along the International Boundary line, which is also the present boundary of Glacier Bay National Monument, to the summit of Mt. Harris;

thence southeasterly and southerly along the divide between the waters of Glacier Bay and Lynn Canal, which is the present boundary of Glacier Bay National Monument, to a point where said divide is forked by the headwaters of Excursion Inlet;

thence easterly and southeasterly along the divide between the waters of Excursion Inlet and Lynn Canal to a point in approximate latitude 58°27'N., longitude 135°18'W., where said divide meets a subsidiary divide between streams flowing into Excursion Inlet;

thence westerly and northwesterly along said subsidiary divide to Excursion Inlet;

thence southerly along the center of Excursion Inlet to its junction with the Icy Passage;

thence westerly and southwesterly along the center of Icy Passage, North Passage, North Indian Pass and Cross Sound to the Pacific Ocean;

thence northwesterly along the Pacific coast, including all islands along the coast, to the mouth of Seaotter Creek;

thence easterly along the north bank of Seaotter Creek to its headwaters;

thence in a straight line to the summit of Mt. Fairweather, the place of beginning, excluding the surveyed lands in fractional Tps. 39 and 40 S., Rs. 57 and 58 E., and T. 40 S., R. 59 E., Copper River meridian, containing approximately 3,322 square miles.

The map transmitted is herewith returned.

Very truly yours,

Acting Assistant Commissioner.

EXHIBIT 32

UNITED STATES
DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WASHINGTON

Address Only
The Director National Park Service

September 15, 1938.

Memorandum for the solicitor:

The secretary has indicated that the following proposed legislation should be sought during the next session of Congress:

A bill to establish the Glacier Bay National Park, Alaska, and for other purposes.

This legislation would give the present national monument the status of a national park and would include additional lands within the park. An enlargement of the present monument could be effected by executive proclamation.

A bill to authorize the Alaska Railroad to construct, maintain, and operate public facilities in the Mount McKinley National Park, Alaska, and for other purposes.

This bill should authorize the Alaska Railroad to construct, maintain, and operate public lodges, furnish the necessary transportation service in the park, and reimburse the existing operator for taking over public facilities heretofore established in the park.

Please supplement our memorandum of August 21, listing the legislation this Service recommends sponsoring during the next session of the Congress, with the above-mentioned proposed legislation.

Acting Director.

cc - Secretary's Office
Mr. Gable
Mr. Wirth
Mr. McGilliam

EXHIBIT 33

UNITED STATES
DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WASHINGTON

Address Only
The Director National Park Service

December 27, 1938.

Memorandum for the Secretary:

The report of Mr. Coffman and Mr. Dixon on the proposed Glacier Bay National Park is attached for your information.

There appears to be no feasible solution of the mining problem in connection with the proposal to submit legislation for the establishment of the area in question as a national park because special legislation has been enacted recently, at the instance of the President, subjecting the Glacier Bay National Monument to prospecting and mining under the Act of June 22, 1936 (49 Stat. 1817). It is believed that legislation for the establishment of the area as a National Park would have to include a provision to the effect that the aforesaid mining act shall remain in effect with regard to the park.

It is believed also that the proposed stablishment of the area as a National Park, subject to prospecting and mining, will be vigorously opposed by the various conservation organizations and others interested in keeping the national park system free from such "non-conforming" uses.

The area desired for addition to the present national monument might be added thereto by Presidential Proclamation, and the Department and this Service thereby avoid criticism for a proposal to establish a national park subject to an unrestricted mining provision. Accordingly, it is recommended that you authorize the Service to prepare a Presidential Proclamation enlarging Glacier Bay National Monument.

Acting Director.

Enclosure 1757579

Approved: _____

Secretary of the Interior.

EXHIBIT 34

UNITED STATES
DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WASHINGTON

Address Only
The Director National Park Service

December 21, 1938.

Dr. W. S. Cooper,
Department of Botany,
University of Minnesota,
Minneapolis, Minnesota.

Dear Doctor Cooper:

Your letter of December 13, with regard to the proposed boundaries for the Glacier Bay area, is received.

The report to which Mr. Dixon refers has not yet been completed but should be ready for submission and consideration in a very short time. The boundaries which are recommended in the report are similar to those which were discussed with you at the time of your visit to Washington in May of last year. There is some question as yet whether the surveyed lands adjacent to Point Gustavus should be included in the proposed boundaries, and also whether the boundaries should extend east to Exursion Inlet and to a portion of the divide between Excursion Inlet and Lynn Canal. Otherwise the boundaries proposed will extend the Glacier Bay National Monument to the shore line both to the south and west, so as to form a natural biotic unit and provide material protection for the Alaska brown and grizzly bears.

Suggestion has been made to request legislation establishing this enlarged area as the Glacier Bay National Park, but as long as the mining provision stands, this would probably be opposed by conservation organizations. It could be extended by proclamation as the National Monument.

We will welcome any suggestions you may wish to offer in this regard.

Sincerely yours,

A. E. DEMARAY.
Acting Director.

CC: Mr. Joseph S. Dixon
Field Naturalist, NPS
San Francisco, California.

JC/ilb

APPENDIX OF STATUTORY PROVISIONS INVOLVED

Antiquities Act of 1906, 16 U.S.C. §§ 431-433

16 U.S.C. § 431. National monuments; reservation of lands; relinquishment of private claims

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

16 U.S.C. § 432. Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of

reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title.

16 U.S.C. § 433. American antiquities

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

* * * *

Alaska Statehood Act, July 7, 1958, 72 Stat. 339, Pub. L. No. 85-508, 48 U.S.C. note prec. § 21

AN ACT To provide for the admission of the State of Alaska into the Union

* * * *

Section 6(m):

The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315

43 U.S.C. § 1301. Definitions

When used in this subchapter and subchapter II of this chapter—(a) The term "lands beneath navigable waters" means—(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction; (2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, [FN1] and (3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico, except that any boundary between a State and the United States under this sub-

chapter or subchapter II of this chapter which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: Provided, however, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams

was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

43 U.S.C. § 1311. Rights of the States

(a) Confirmation and Establishment of Title and Ownership of Lands and Resources; Management, Administration, Leasing, Development, and Use

It is hereby determined and declared to be in the public interest that

(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and

(2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof,

recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) Release and Relinquishment of Title and Claims of United States; Payment to States of Moneys Paid under Leases

(1) The United States hereby releases and relinquishes unto said States and persons aforesaid, ex-

cept as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;

(2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and

3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on May 22, 1953, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

* * * *

43 U.S.C. § 13.13. Exceptions from Confirmation and Establishment of States' Title, Power and Rights

There is excepted from the operation of section 1311 of this title—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds

under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right; (b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and (c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.